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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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WHAT: Free public briefings (approximately 3 hours) to present:

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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 15, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1436

RIN 0560–AH60

Farm Storage Facility Loan and Sugar Storage Facility Loan Programs

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is amending the Farm Storage Facility Loan (FSFL) and Sugar Storage Facility Loan (SSFL) regulations to implement provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The 2008 Farm Bill adds hay and renewable biomass as eligible FSFL commodities, extends the maximum loan term to 12 years, and increases the maximum loan amount to $500,000. This rule also adds fruits and vegetables (including nuts) as eligible facility loan commodities and adds cold storage facilities as eligible facilities pursuant to discretionary authority in the 2008 Farm Bill. This rule amends the regulations to clarify requirements for loan security and to allow for a partial loan disbursement during construction if certain conditions are met. This rule amends the FSFL program regulations, which include SSFLs; however, there are no changes to the specific requirements for SSFLs.

DATES: *Effective Date:* August 17, 2009.

FOR FURTHER INFORMATION CONTACT: DeAnn Allen, Program Manager, Price Support Division, FSA, USDA, STOP 0512, 1400 Independence Ave., SW., Washington, DC 20250–0512; *telephone:* (202) 720–9889; *facsimile:* (202) 690–3307; *e-mail: deann.allen@wdc.usda.gov.* Persons with disabilities who require alternative means of communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) FSFL program provides low-interest financing for producers to build or upgrade farm storage and handling facilities. FSA was initially authorized to implement the FSFL program through the CCC Charter Act (15 U.S.C. 714b), which provides that CCC may make loans to grain producers needing grain storage facilities in areas where the Secretary determines there is a deficiency of such storage. When there was no documented shortage of storage, such as the period between 1982 and 2000, the program did not operate. Section 1614 of the 2008 Farm Bill (Pub. L. 110–246, 7 U.S.C. 8789) authorizes changes to the FSFL program through 2012 without the specific requirement that the Secretary determine that there is a deficit in grain storage. This rule therefore amends § 1436.2, ''Administration,'' to remove a provision that the Deputy Administrator may suspend the program if there is no shortage of storage.

The current FSFL program, which has been operating since May 2000, makes loans primarily for grain storage and drying equipment. This rule expands the program to include hay and renewable biomass as eligible facility loan commodities, as required by the 2008 Farm Bill, and to include fruit and vegetables as eligible facility loan commodities, which is a discretionary addition permitted by the 2008 Farm Bill.

The on-farm storage financed by the FSFL program allows producers flexibility in timing when to sell their crops. On-farm storage allows producers to avoid some fees associated with storing grain at commercial facilities (grain elevators). New uses for grain and other renewable biomass crops may increase the need for on-farm storage. In addition, the costs of building grain storage facilities are increasing.

Most of the current participants in the program are grain producers, particularly corn, soybean, and wheat producers. Some dairy farms use the program to fund silage storage. The expansions in this rule will allow new groups to benefit from the program. Producers of fruits and vegetables are expected to participate in the FSFL program to fund short-term storage of perishable produce for farmers' markets. Producers of hay are expected to participate in the program to fund storage of high quality hay for sale to the equine and cow-calf industry. Renewable biomass producers are expected to participate in the FSFL program to fund storage of these renewable plant materials to maintain the quality of the biomass between harvest and delivery to a purchaser.

The amendments in this rule allowing larger loans will address the increasing cost for storage facilities. According to studies by Kansas State University, in FY 1999, the average cost to construct a bushel of grain storage was approximately $1.37 per bushel; by FY 2007, the cost had increased to $1.80 per bushel of grain storage.[1] Producers are also constructing larger structures for grain storage. In FY 1999, the majority of the bins constructed stored between 10,000 to 50,000 bushels of grain. In FY 2007, grain bin manufacturers reported the majority of the bins constructed had the capacity to store between 100,000 and 200,000 bushels of grain. The Kansas State University study in 2007 also found that producers are demanding larger grain bins. In general, larger buildings have a lower per bushel construction cost, but a higher total cost. An increasing percentage of FSFLs, over 5 percent in 2008, are for the maximum dollar amount allowed in the current regulations. As specified in the 2008 Farm Bill, the maximum cap is raised from $100,000 per borrower to $500,000 per loan, which should address the demand for larger and more costly structures.

The prior regulations and the amendments in this rule apply to both the FSFL program and the SSFL program, which is a sub-program of the main FSFL program. Since the SSFL program was established, CCC has only received one loan application. That loan application was withdrawn by the applicant before approval. Therefore, most of the discussion in this preamble focuses on the FSFL program for all the

[1] The KSU studies discussed in this paragraph are available on the Internet at: *http://www.agrisk.umn.edu/cache/ARL01317.pdf* and *http://www.oznet.ksu.edu/library/agec2/mf2474.pdf.*

eligible facility loan commodities except sugar. Section 1404 of the 2008 Farm Bill requires the SSFL program to not charge prepayment penalties; no change is needed in this rule to implement that provision because the existing regulation already specifies that the loan may be paid in full or part without any penalty at any time before maturity. This rule makes minor language changes to some of the provisions concerning SSFLs, to keep the provisions for SSFLs consistent with the provisions for the other eligible facility loan commodities, but makes no changes to the substantive requirements for SSFLs.

New and Revised Definitions

This rule amends § 1436.3, ''Definitions,'' to add hay and renewable biomass to the definition of a ''facility loan commodity,'' as required by the 2008 Farm Bill. The 2008 Farm Bill also gives the Secretary authority to include as eligible facility loan commodities ''other storable commodities (other than sugar) as determined by the Secretary.'' Therefore, as a discretionary change, this rule adds fruits and vegetables as eligible facility loan commodities for FSFL. Fruits and vegetables include nuts. This rule adds definitions for hay and renewable biomass.

Hay is defined as a grass or legume that has been cut and stored. Commonly used grass mixtures include rye grass, timothy, brome, fescue, coastal Bermuda, orchard grass, and other native species, depending on the region. Forage legumes include alfalfa and clovers. Hay will be considered to include grains where the entire plant, including the seeds, has been cut, stored, and used for animal feed, such as in the case of frost-damaged grain crops harvested as hay. Loans will not be made to store wheat straw or corn stalks used for bedding; these are not considered hay.

''Renewable biomass'' is defined as any organic matter that is available on a renewable or recurring basis including renewable plant material such as feed grains or other agricultural commodities (including, but not limited to, soybeans and switchgrass), other plants and trees (excluding old-growth timber), algae, crop residue (including, but not limited to, corn stover, various straws and hulls, and orchard prunings), other vegetative waste material (including, but not limited to, wood waste, wood residues, and food and yard waste) used for the production of energy in the form of heat, electricity, and liquid, solid, or gaseous fuels. Manure from any source is not included.

This definition is consistent with definitions of renewable biomass used by other USDA and Department of Energy (DOE) programs. If renewable biomass storage facilities are eligible for other loans or grants, such as those provided by USDA Rural Development or DOE, the amount of those benefits will be subtracted from the amount of the FFSL, so as to avoid duplication of benefits. This is consistent with the prior operation of the FSFL program.

It also adds definitions for ''cold storage facility,'' ''commercial facility,'' and ''commercial storage.'' The definitions of ''commercial storage'' and ''commercial facility'' are based on the terms commercial purpose and commercial operation that were previously in §§ 1436.6 and 1436.13. This rule moves the definitions related to commercial storage to § 1436.3, ''Definitions,'' and amends them to include facilities for the new eligible facility loan commodities.

The definition of ''storage need requirement'' is removed from the Definitions section, and expanded specific provisions for storage need requirements for each type of eligible commodity are added to § 1436.9, ''Loan Amount and Loan Application Approvals.''

This rule adds a definition for ''resale collateral value'' to clarify how FSA county committees will determine the value of loan collateral if the collateral is removed from its original location and sold.

This rule removes the following terms that are no longer used in the rules: Person and Uniform Commercial Code.

Loan Terms, Eligible Storage, and Equipment

Prior to this rule, the loan term for all storage facilities, except sugar facilities, was 7 years, and the useful life of a facility was required to be at least 10 years. This rule changes the maximum loan term to 12 years in § 1436.7, ''Loan Term,'' and increases the required useful life of all facilities to a minimum of 15 years in § 1436.6, ''Eligible Storage or Handling Equipment.'' The 12 year loan term is required by the Farm Bill; the 15 year minimum useful life of the facility is a discretionary change made to ensure that the loan will be adequately secured throughout the loan term. For most structures, the useful life of the commodity storage facility, if properly maintained, is well over 15 years. The required minimum useful life of a sugar facility is already set at 15 years in the current regulations, and is not changing with this rule. This rule also amends § 1436.6 to specify that the loan collateral must be used for the purpose for which the storage facility was delivered, erected, constructed, assembled, or installed for the entire term of the loan. The intent of the program is to provide on-farm storage to producers for the storage of eligible facility loan commodities they produce and not for any other purpose.

This rule amends § 1436.6 to allow the Deputy Administrator, Farm Programs, to approve rebuild kits that are not from the original manufacturer for oxygen-limiting storage structures. Rebuild kits typically include new parts for the purpose of rebuilding an existing structure to bring it back to a manufacturer's specifications and may include, but are not limited to, nuts, bolts, washers, seals, gaskets, internal breather bags, a new base kit, and a new floor. Loans have been available for remanufactured oxygen-limiting storage structures built to the original manufacturer's design specifications using rebuild kits, but the prior rule allowed only original manufacturer rebuild kits. This discretionary change is necessary because the original manufacturer for the majority of the original oxygen-limiting structures is no longer in business. There are a number of reputable companies manufacturing the rebuild kits.

This rule amends § 1436.6 to add specific provisions for facilities and eligible cost items for hay, renewable biomass, and fruit and vegetable storage. In each case, the requirements are similar to those for other commodities, with the additional requirement for hay and renewable biomass that the flooring be suitable for the region in which the facility is located, and designed according to acceptable guidelines. This requirement is to ensure that the program makes loans for facilities that are appropriately designed for the intended purpose, and not for some other purpose. For fruit and vegetable cold storage facilities, the allowable cost items include building insulation to help limit the loss of cool air from the structure.

No loans will be approved for any portable structures, portable handling and cooling equipment, or used or pre-owned structures and equipment. Loans may be approved for modifications to existing structures. Loans will not be made for existing structures, but may be made for new components added to existing structures. Remanufactured oxygen-limited structures rebuilt to the original specifications are not considered used, due to the extensive nature of the remanufacturing process.

This rule amends § 1436.9, ''Loan Amount and Loan Application Approvals,'' to specify that any portion of a storage structure that is not used for storing facility loan commodities, such

as an office space or display area, will not be eligible for loan. The loan amount will be adjusted to exclude this ineligible space. This provision was already in the regulation, but is clarified and expanded.

This rule further clarifies that FSFL structures are prohibited from being used for any commercial storage. The purpose of the FSFL program is to provide low-cost financing to producers to store the commodities that they produce. Accordingly, the program does not provide financing for commercial storage facilities.

This rule amends § 1436.9 to add provisions regarding how storage need requirements will be determined for specific eligible facility loan commodities. These requirements were previously in the Definitions section. The purpose of these requirements is to ensure that CCC uses its limited resources to finance storage facilities that are of a capacity appropriate to the needs of the producer. Storage capacity for two years will be used to estimate the storage needs for hay and renewable biomass commodities. This is the same time period used for all of the other originally approved facility loan commodities in the current regulations. For fruits and vegetables, the cold storage need requirement will be determined based on production for one year. Fruits and vegetables are perishable commodities and their quality can only be maintained for a limited period of time. Cold storage facilities can extend this period of time, but a cold storage facility cannot maintain the quality of fruits and vegetables for longer than a year. Although apples may be stored from between 3 to 8 months, and carrots will maintain their quality for approximately 6 months, the quality for many fruits and vegetables in cold storage can typically be maintained for only a week to 10 days.

Eligible Borrowers

Section 1614(b) of the 2008 Farm Bill (7 U.S.C. 8789(b)) requires that producers eligible for FSFLs have a satisfactory credit history, demonstrate the ability to repay the loan, and show a need for increased storage capacity. These requirements were already included in the regulations in § 1436.5, ''Eligible Borrowers.'' This rule makes only minor changes, described below, to the regulations specifying borrower eligibility requirements.

Prior to this rule, the regulations allowed a producer to construct storage using as eligibility the producer's own share of the crop. On occasion, a crop share landlord or tenant requests to construct a storage structure to store all commodities produced on the farm but only one of the individuals wishes to assume liability for the loan. This rule amends § 1436.5 to address this situation. A new provision in this rule allows the Deputy Administrator, Farm Programs, to issue a waiver to use all production from the farm to compute FSFL eligibility for a crop share landlord or tenant. These waivers must be requested by the applicant in writing, and will be issued on a case by case basis.

Prior to this rule, the regulations required borrowers to carry crop insurance on all crops of economic significance. However, crop insurance under the Federal Crop Insurance Program is not available for some of the renewable biomass commodities, and as an example, hay may not be an economically significant crop on a particular farm depending upon the total expected value of all crops grown by the applicant. This rule amends this section of the regulations to clarify that if crop insurance is not available for a commodity for which a producer is requesting FSFL, crop insurance is not a requirement. This rule also adds a requirement that borrowers with outstanding FSFLs must present proof of crop insurance annually to the FSA office servicing their loan, and clarifies that crop insurance or Noninsured Crop Disaster Assistance Program (NAP) coverage, if available, is required on all the commodities stored in the FSFL-funded facility, whether economically significant or not.

Loans are approved and disbursed to a farming operation that is an eligible entity or an eligible producer at the time of approval. This rule amends § 1436.16 ''Foreclosure, Liquidation, Assumptions, Sales or Conveyance, or Bankruptcy'' to add one more available option to address the situation where changes are made to the farming operation after the loan is disbursed. This rule adds a new paragraph (d) to § 1436.16 to specify that if any significant changes are made, as determined by CCC, to the legal or operating status of the farming operation with an outstanding FSFL, such as changing from a partnership to a corporation, or discontinuing farming, the borrower must do one of the following:

- Find an eligible borrower or entity to assume the loan;
- repay the loan; or
- undergo new financial analysis as approved and determined by CCC to ensure that CCC's interests are protected and it is determined by CCC that the current borrower is in a position to continue making the scheduled loan payments.

The provisions for loan assumption or repayment are not changing; the financial analysis provision is a new option to allow flexibility in situations where changes are made to the farming operation after the loan is disbursed. This situation typically occurs when a borrower retires and wishes to maintain ownership of a structure but is no longer receiving a share of the crop. CCC will allow the loan to continue, provided the scheduled payments are made, the facility is not used as a commercial facility or operation, and one of the three provisions for addressing changes to the farming operation is met.

Loan Terms, New Loan Limit

Prior to this rule, the FSFL regulation at § 1436.9 limited FSFLs for all eligible facility loan commodities except sugar to a maximum of $100,000 for each borrower signing the note and security agreement. This rule increases that limit to $500,000 per loan, not per borrower, as required by the 2008 Farm Bill. This rule continues to specify the loan limit as 85 percent of the qualified costs to construct an on-farm storage structure, which is not a change from the prior regulation. With the new maximum limit of $500,000, it will be possible for an eligible borrower to construct a structure costing nearly $589,000. It will also be possible for a borrower to qualify for multiple loans for multiple facilities, but such borrower must separately qualify for each loan and CCC will administer each loan separately.

As discussed earlier, the loan term is extended to a maximum of 12 years, as required by section 1614 of the 2008 Farm Bill. This rule amends § 1436.7, ''Loan term,'' to specify the loan term of 7, 10, or 12 years, with the loan term determined by the amount of loan principal; within the specific options set by this rule, the borrower may choose the term as follows:

- For a loan with the total principal of $100,000 or less, the term will be set at 7 years.
- For loans from $100,000.01 through $250,000, the borrower can choose a loan term of 7 or 10 years.
- For loans from $250,000.01 through $500,000, the borrower can choose a loan term of 7, 10, or 12 years.

The requested loan term will be specified by the borrower at the time of loan application on the loan application form, as the required financial analysis must take into account the annual payment amount. The borrower may change the loan term prior to the final loan disbursement if the principal amount qualifies the loan for a different

term and if a new financial analysis indicates the annual payments will be manageable as determined by CCC. If a partial disbursement has been issued, the term on the amount disbursed can not be adjusted because the promissory note and the security agreement establishing the interest rate and loan term have already been completed and the lien perfected.

This rule amends § 1436.12, ''Interest and fees,'' to clarify how the interest rate is determined for FSFLs. CCC borrows from the U. S. Treasury to fund the FSFL program. The FSFL interest rates are equivalent to the rate of interest charged on Treasury Securities of a comparable term and maturity. For this reason, the interest rate on the 7, 10, and 12 year FSFL loan terms may be different. The rates will be published on the FSA website and posted in the county office.

This rule also amends § 1436.12 to specify that the loan application fee for FSFLs will be assessed per loan borrower and not per loan. The non-refundable loan application fee for each FSFL is increased from not less than $45 per loan to not less than $100 per borrower. This discretionary change is needed to cover the cost to CCC of making these loans. CCC is required to conduct lien searches, obtain credit reports, and file liens on the loan security for all borrowers on a loan. The cost to CCC for these lien searches, security filings, and credit reports has increased since the regulations were published in 2001. The purpose of the loan application fee is to cover the cost of the fees associated with the loan.

Security for Loan

This rule makes a number of changes to § 1436.8, ''Security for Loan,'' to implement provisions of the 2008 Farm Bill regarding loan security. Section 1614(f)(2) of the 2008 Farm Bill (7 U.S.C. 8789(f)(2)) provides that a severance agreement from the holder of any prior lien on the real estate parcel on which the storage facility is located will not be required if the borrower agrees to increase the down payment on the storage facility loan in an amount determined by the Secretary or provides another form of security acceptable to the Secretary. This rule amends the regulations to include this provision. CCC has determined that if the borrower increases the down payment from 15 percent to 20 percent, severance agreements will not be required. This will only apply to loans $50,000 or less because all other loans already require additional security and in most instances when CCC has a mortgage on the real estate, the facility is not severed from the real estate.

Section 1614(f)(3) of the 2008 Farm Bill (7 U.S.C. 8789(f)(3)) requires that CCC allow a borrower to use a parcel of real estate to secure a loan if this acreage is not subject to any other liens or mortgages superior to CCC's lien interest, and is of adequate size and value to secure the loan and insure repayment. That is consistent with current CCC policy. This rule amends the regulations to specifically include this provision.

This rule also amends § 1436.8 to require loans for $50,000 or less that are secured by collateral with no resale value, as determined by CCC, to have additional security. Additional security on loans of $50,000 or less has not been required in the past unless the aggregate outstanding FSFL balance for the borrower exceeds $50,000 or CCC determines as a result of financial analysis that additional security is required. Some FSFL facilities, such as poured cement open bunker silos, have nothing that can be removed and sold if a borrower defaults on the loan. CCC will now require county committees to determine if a structure has resale collateral value and if additional security is required for the loan. This change is needed to protect CCC's interests in case of default. Most of the loans in the FSFL program are under $50,000.

Disbursement

Section 1614(e) of the 2008 Farm Bill (7 U.S.C. 8789(e)) requires the availability of one partial loan disbursement and the final loan disbursement. This rule amends § 1436.10, ''Down Payment,'' and § 1436.11, ''Disbursements and Assignments,'' to implement the new provisions regarding the partial and final loan disbursement. The partial loan disbursement must be requested by the borrower and will be made to facilitate the purchase and construction of an eligible facility. The partial loan disbursement will be available after a portion of the construction has been done and commensurate with the amount of construction completed on the approved structure. CCC has determined at this time that the maximum amount of the partial loan disbursement will be 50 percent of the projected and approved total loan amount, and cannot exceed $250,000. The borrower will need to provide acceptable documentation specifying the cost of the completed portion of the structure to CCC, then FSA will inspect the facility to verify the amount of the construction completed. Security required for the principal amount of the partial loan disbursement will be required before the partial disbursement is finalized. CCC will make the final loan disbursement after the borrower provides acceptable documentation specifying the total cost of the facility to CCC and after the facility is completely delivered, erected, constructed, assembled, or installed. An FSA representative will inspect and approve the facility prior to the final loan disbursement. All security needed to fully secure both the partial and final loan disbursements must be received before the final loan disbursement.

For SSFLs, the option for a partial loan disbursement is not available, because section 1404 of 2008 Farm Bill, which amends 7 U.S.C. 7971(c), which contains provisions specific to SSFLs, does not include this provision.

As a conforming change, this rule amends § 1436.10 to specify that the down payment will be made before either the partial or final loan disbursements.

Fruits and Vegetables

The discretionary change to add cold storage for fruits and vegetables into the farm storage facility loan program regulation is one avenue USDA is implementing to help farmers. The post-harvest cooling of produce to remove the field heat is necessary to reduce incidents of microbial contamination. Cooling also extends the shelf life of produce.

Cooling facilities are an expensive outlet for beginning and start-up growers. Many farmers indicate a need to have on-farm or proximate access to cooling facilities, but found that financing them was difficult given the seasonal nature of their use. With credit more difficult to obtain, many producers have found they are unable to get commercial lending for a cold storage facility.

Small farms are diversifying to make a profit and with the emphasis of buying locally grown food, many small fruit and vegetable producers market their crops at farmers markets. To remove the field heat from their produce, a cold storage facility is needed to cool down their crops immediately after harvest and prior to trucking to a farmers market. Many producers must truck their produce to a cold storage facility up to 2 hours away to remove the field heat, and go back to retrieve it before proceeding to the market.

The 2008 Farm Bill increased the loan limit from $100,000 per borrower to a maximum of $500,000 per loan. Even with the maximum loan amount, considering the cost of a cold storage

facility, only a small to moderate size facility could be constructed, thereby benefiting the small to mid size farmers. The smaller producers store their crops for a much shorter term and are constantly moving in and out a variety of different crops.

A study entitled ''2007 Pennsylvania Shipping Point Market Feasibility Study,'' by Philip Gottwals, Duke Burruss, and Ali Church indicated that a self enclosed modular forced air cooling and cold storage facility that would meet the needs of the small producer cost approximately $28,000 in 2007. This facility has a capacity of 20 pallets and would remove field heat by forced air cooling and serve as a temporary cold storage room. The structure in this example is 8 feet × 40 feet × 8.5 feet high equaling 2,720 cu. feet of storage space. The price is still around $28,000.

A cold storage building measuring 40 feet × 60 feet × 14 feet high where half of the structure (16,800 Cu. feet) was refrigerated for cold storage, cost $125,000. This is considered a small cold storage facility.

The addition of cold storage facilities for fruits and vegetables will help the Department's outreach goals and initiatives to expand access of USDA programs and services to underserved groups. Underserved groups include small farms, beginning farmers, and racial and ethnic minority groups. Only 2 percent of all U.S. farms primarily grow vegetables, whereas vegetable production is the primary enterprise for 6 percent of Black farmers, 13 percent of Asian farmers, and 9 percent of American Indian farmers. Fruits or nuts are the primary enterprise for 4 percent of all U.S. farms, but are the primary enterprise for 37 percent of Asian farmers and 16 percent of Hispanic origin farmers. Small farms and beginning farmers also are more likely to be involved in these farm enterprises. Therefore, adding these agricultural products to the eligible commodities increases the Departments outreach to these underserved groups.

Specialty crops, which include fruits and vegetables, account for most direct-to-consumer sales, and are produced at a high frequency by small farmers. The direct-to-consumer sales through local markets play a pivotal role in maintaining the viability of family farmers by providing them direct access to markets close to home. Farmers who sell directly to their customers receive more of the full retail price for their food, which means that many small farmers are able to earn greater returns.

Other Miscellaneous Changes

This rule amends § 1436.4, ''Availability of Loans,'' to designate where the producer must submit loan applications for renewable biomass commodity facilities and cold storage facilities for fruits and vegetables. This rule amends that section to specify that if the commodities will be produced on land that has farm records established in a county office, the application must be submitted to that office. If the commodities will be produced on land that does not have farm records established in a county office, the application must be submitted to the county FSA office that services the county where the facility will be located. This amendment is needed to clarify where the loan applications should be filed, because the new eligible facility loan commodities may be produced on land that does not currently have FSA farm records.

This rule amends § 1436.9, ''Loan Amount and Loan Application Approvals,'' to allow the Deputy Administrator, Farm Programs, to set a limit for the approval authority of original loan applications by county and State FSA committees that is lower than the maximum loan amount. The intent of this amendment is to protect the financial interests of CCC.

This rule also amends § 1436.9 to allow the State FSA committee the authority to extend the loan approval period for an additional 4 months for a total of 12 months from the original approval date. In the current rule, the initial loan approval period is set at 4 months from the county or State committee approval date. The FSA State committee or its representative can currently extend approval for another 4 months. This rule will change that to allow a second extension, for a total of 12 months. Currently, if the producer cannot complete construction of the facility in 8 months, the State Committee has to send the loan approval to the FSA headquarters office to formally approve the extension. There are common reasons why a facility cannot be completed in 8 months, such as weather, part defects, contractor scheduling issues, and other construction delays. The change will expedite and simplify the loan extension process for producers who have routine construction delays, by allowing a second loan extension to be made at the State committee level. Only the State committee will have the authority to extend the loan approval period to 12 months and that authority cannot be delegated. This change is permitted for all eligible facility loan commodities except sugar. The provisions regarding the extension for SSFLs remain unchanged.

This rule amends § 1436.13, ''Loan Installments, Delinquency, and Acceleration of Maturity Date,'' to clarify that the producer's first installment payment is due and payable to CCC one year from the date of each of the partial and final loan disbursements. Producers that request a partial disbursement, which will therefore also necessitate a final payment, will have two notes for the one loan with two payment schedules. One note will be for the partial disbursement and the second note will be for the final disbursement of the loan; there will be only one loan application required for the two notes. Producers that request a partial disbursement will have two annual installments due one year from each disbursement and annually on these dates until the loans have been paid in full.

This section is also amended to clarify the procedure for rescheduling debts. Any rescheduling or alternate repayment arrangements on any outstanding loans will require prior written approval from the Deputy Administrator, Farm Programs. This is a discretionary change to protect CCC's financial interest by assuring that proper procedure is followed in rescheduling any FSFL debts.

This rule adds retail and wholesale cold storage facilities to the provisions prohibiting commercial facilities for outstanding FSFLs in this section.

This section allows CCC to declare the entire loan immediately due and payable if the facility is used for a commercial operation, which is not a change from the previous rule.

In addition, nonsubstantive, housekeeping changes are being made to the regulations to fix typos and add to the clarity, readability, plain language, and consistency of the regulations. Some examples of these changes include:

- Clarifying the list of commodities to reflect the full list throughout the regulation, for example in the definition of ''facility loan commodity,'' some of the commodities had not been added the last time the regulations were revised;
- Referring consistently to a commodity as a ''facility loan commodity'' instead of ''grain'' versus ''commodities'' or ''agricultural commodities.'' The same type of wording change was made for commercial operations, facility, storage, and other terms where consistency was needed;

• Clarifying which provisions apply to sugar and which do not apply; and

• Replacing ''shall'' with ''will'' or ''must'' based on context where deemed appropriate.

Notice and Comment

These regulations are exempt from notice and comment provisions of 5 U.S.C. 553, as specified in section 1601(c) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of section 5 or title 5 of the United States Code or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking.

Executive Order 12866

This final rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. A Cost Benefit Analysis is summarized below and is available from the contact information listed above.

Summary of Economic Impacts

The amendments to the FSFL program in this rule will add costs of $6 million in 2009, $28 million in 2010, $30 million in 2011, and $32 million in 2012 over the cost of the existing program. This rule was designated as economically significant based on original estimates that included the full cost of the program instead of the regulatory impact of the changes to the existing program. The majority of the increase in demand for loans will come from the increase in loan size eligibility from $100,000 to $500,000; the remaining increase will come from demand for storage of the additional eligible crops for storage (hay, fruits and vegetables, and renewable biomass). The total program cost includes a roughly 3% increase per year in lending volumes, due to increased construction costs and capacity needs.

The total benefit to producers per year from the FSFL program is about $10 million per year in interest rate savings over what they would have had to pay to finance comparable loans from commercial lenders. Assuming that all those producers could have gotten a commercial loan and would have done so, commercial lenders have an equivalent $10 million loss in loan revenue per year. If credit markets remain tight, the benefits to producers could be larger, because the spread between FSFL rates and commercial rates might be larger. The availability of below-market rate loans for on-farm storage facilities has a small potential negative impact on commercial storage facilities, such as grain elevators. FSFL has funded less than 4% of the on-farm storage capacity in the U.S., so it is unlikely that the program is having a significant impact on commercial storage facilities at a national level, although there may be more significant localized effects in locations where FSFL has a relatively larger share of the new facility loan market.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act because CCC is not required to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Review

FSA has prepared a Programmatic Environmental Assessment (PEA) to evaluate the environmental consequences associated with implementing the changes to the FSFL Program authorized by the 2008 Farm Bill. The PEA notice is published elsewhere in this issue of the **Federal Register**. In consideration of the analysis documented in the PEA and the reasons outlined in the Finding of No Significant Impact (FONSI), the Preferred Alternative would not constitute a major Federal action that would significantly affect the quality of the human environment. Therefore, an environmental impact statement will not be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

The final rule has been reviewed under Executive Order 12988. This rule preempts State laws that are inconsistent with its provisions. This rule is not retroactive and does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 870 must be exhausted.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal governments or have tribal implications that preempt tribal law.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. In addition, CCC was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Section 1601(c)(3) of the 2008 Farm Bill requires that the Secretary use the authority in section 808 of title 5, United States Code, which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. This rule affects a large number of agricultural producers who are dependent upon these provisions for financing farm storage and need to know the details as soon as possible because it affects their planting, marketing, and building decisions. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the **Federal Register**.

Federal Assistance Programs

The changes in this rule affect the following FSA programs as listed in the *Catalog of Federal Domestic Assistance:*

10.056—Farm Storage Facility Loans.

Paperwork Reduction Act

The regulations in this rule are exempt from requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the

use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 1436

Administrative practice and procedure, Loan programs–agriculture, Penalties, Price support programs, Reporting and recordkeeping requirements.

■ For the reasons discussed above, this rule amends 7 CFR part 1436 as follows:

PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

■ 1. Revise the authority citation for part 1436 to read as follows:

Authority: 7 U.S.C. 7971 and 8789; and 15 U.S.C. 714–714p.

§ 1436.1 [Amended]

■ 2. Amend § 1436.1 by removing the word ''state'' and adding in its place the word ''State''.

■ 3. Amend § 1436.2 as follows:

■ a. Amend paragraphs (a), (c), introductory text, (d) and (f) second sentence, by removing the word ''shall'' each time it appears and adding in its place the word ''will'' and

■ b. Revise paragraph (g) to read as set forth below.

§ 1436.2 Administration.

* * * * *

(g) The purpose of the Farm Storage Facility Loan program is to provide CCC funded loans for producers of grains, oilseeds, pulse crops, sugar, hay, renewable biomass, fruits and vegetables (including nuts), and other storable commodities, as determined by the Secretary, to construct or upgrade storage and handling facilities for the eligible facility loan commodities they produce.

■ 4. Amend § 1436.3 as follows:

■ a. Amend the undesignated introductory paragraph, by removing the word ''shall'' each time it appears and adding in its place the word ''will'',

■ b. Add new definitions, in alphabetical order, for the terms ''cold storage facility,'' ''commercial facility,'' ''commercial storage,'' ''hay,'' ''renewable biomass,'' and ''resale collateral value'' as set forth below,

■ c. Revise the definitions of ''collateral'' and ''facility loan commodity'' to read as set forth below, and

■ d. Remove the definitions of ''person,'' ''storage need requirement,'' and ''Uniform Commercial Code''.

§ 1436.3 Definitions.

* * * * *

Collateral means the storage structure; the drying, handling, and cold storage equipment; and any other equipment securing the loan.

Cold storage facility means a facility or rooms within a facility that are specifically designed and constructed for the cold temperature storage of perishable commodities. The temperature and humidity in these facilities must be able to be regulated to specified conditions required for the commodity requiring storage.

Commercial facility means any structure, used in connection with or by any commercial operation including, but not limited to, grain elevators, warehouses, dryers, processing plants, or cold storage facilities used for the storage and handling of any agricultural product, whether paid or unpaid. Any structure suitable for the storage of an agricultural product that is in working proximity to any commercial storage operation will be considered to be part of a commercial storage operation.

Commercial storage means the storing of any agricultural product, whether paid or unpaid, for persons other than the owner of the structure, except for family members and tenants or landlords with a share in the eligible facility loan commodity requiring storage.

* * * * *

Facility loan commodity means corn, grain sorghum, oats, wheat, barley, rice, raw or refined sugar, soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, crambe, sesame seed, other oilseeds as determined and announced by CCC, dry peas, lentils, or chickpeas harvested as whole grain, peanuts, hay, renewable biomass, and fruits and vegetables (including nuts). Corn, grain sorghum, wheat, and barley are included whether harvested as whole grain or other than whole grain.

* * * * *

Hay means a grass or legume that has been cut and stored. Commonly used grass mixtures include rye grass, timothy, brome, fescue, coastal Bermuda, orchard grass, and other native species, depending on the region. Forage legumes include alfalfa and clovers.

* * * * *

Renewable biomass means any organic matter that is available on a renewable or recurring basis including renewable plant material such as feed grains or other agricultural commodities (including, but not limited to, soybeans and switchgrass), other plants and trees (excluding old-growth timber), algae, crop residue (including, but not limited to, corn stover, various straws and hulls, and orchard prunings), other vegetative waste material (including, but not limited to, wood waste, wood residues, and food and yard waste) used for the production of energy in the form of heat, electricity, and liquid, solid, or gaseous fuels. Manure from any source is not included.

Resale collateral value means collateral that can be sold and moved to a new location for which compensation equal to the outstanding loan value can be expected.

* * * * *

■ 5. Revise § 1436.4 to read as follows:

§ 1436.4 Application for loans.

(a) An application for a loan must be submitted:

(1) For all loans, except loans for renewable biomass storage facilities and cold storage facilities for fruits and vegetables, to the administrative county office that maintains the records of the farm or farms to which the application applies. With State office approval, loans may be made or serviced by a county office other than the administrative county office.

(2) For loans for renewable biomass storage facilities and cold storage facilities for fruits and vegetables, to the administrative county FSA office that maintains the records of the farm or farms to which the application applies, if the facility will be located on land that has farm records established at the county office. If the commodities will be produced on land that does not have farm records established at the county office, the application must be submitted to the county FSA office that services the county where the facility will be located.

(b) Upon request, the applicant must furnish information and documents as the State or county committee deems reasonably necessary to support the application. This may include financial statements, receipts, bills, invoices, purchase orders, specifications, drawings, plats, or written authorization of access.

(c) For sugar storage facility loans, a loan application must be submitted to the county FSA office that maintains the applicant's records. If no such records exist, loan applications must be submitted to the county office serving the headquarters location of the sugar processor.

(d) Submitting an application does not ensure loan approval nor create any liability on behalf of CCC. Borrowers who authorize delivery, site

preparation, or construction actions without an approved loan, do so at their own risk.

■ 6. Amend § 1436.5 as follows:
■ a. Amend paragraph (a)(4) by adding the words ''as determined'' immediately before the words ''by CCC;''
■ b. Revise paragraphs (a)(5) and (a)(6) to read as set forth below,
■ c. Amend paragraph (a)(7) by removing the acronym ''USDA'' and adding, in its place the words ''the U.S. Department of Agriculture (USDA)'',
■ d. Amend paragraph (a)(11) by adding the words ''or a crop insurance violation'' immediately after the word ''violation,'' and
■ e. In paragraph (b), introductory text, remove the word ''related''.

§ 1436.5 Eligible borrowers.

(a) * * *

(5) Demonstrates a need for increased storage capacity as determined by CCC if the applicant is applying for a loan for a storage structure. The Deputy Administrator, Farm Programs, may issue a waiver, if requested, on a case by case basis if a crop share landlord or tenant requests to construct a structure to store commodities produced on the farm but only one of the two wishes to accept loan liability;

(6) Annually provides proof of crop insurance offered under the Federal Crop Insurance Program for insurable crops of economic significance on all farms operated by the borrower in the county where the storage facility is located. Crop insurance or Noninsured Crop Disaster Assistance Program (NAP) coverage, if available, is required on all the commodities stored in the FSFL-funded facility, whether economically significant or not; crop insurance under the Federal Crop Insurance Program may not be available for certain renewable biomass commodities;

* * * * *

■ 7. Amend § 1436.6 as follows:
■ a. Revise paragraphs (a), introductory text, and (a)(2) to read as set forth below,
■ b. In paragraph (a)(1) remove the number ''10'' and add, in its place, the number ''15'',
■ c. In paragraph (a)(3) remove the number ''10'' and add, in its place, the number ''15'' and remove the word ''and'' at the end,
■ d. In paragraph (a)(4) remove the number ''10'' and add, in its place, the number ''15'' and remove the period at the end and add, in its place, a semicolon.
■ e. Add new paragraphs (a)(5) and (a)(6) to read as set forth below,
■ f. Revise paragraph (b) introductory text to read as set forth below,
■ g. Amend paragraph (b)(3) to remove the word ''grain'' and add, in its place, the words ''eligible facility loan commodity'',
■ h. Amend paragraph (b)(4) to remove the word ''grain'' and add, in its place, the words ''eligible facility loan commodity'' and remove the word ''and'' at the end,
■ i. Amend paragraph (b)(5) to remove the word ''grain'' and add, in its place, the words ''eligible facility loan commodity'' and remove the period at the end and add, in its place ''; and'',
■ j. Add new paragraph (b)(6) to read as set forth below,
■ k. Revise paragraphs (c), introductory text, (c)(3), and (c)(5) to read as set forth below,
■ l. Revise paragraph (d) to read as set forth below,
■ m. Amend paragraph (e) in the first sentence to add the words ''for all eligible facility loan commodities except sugar and fruits and vegetables'' immediately after the word ''Loans'' and remove the number ''10'' and add, in its place, the number ''15'',
■ n. Add introductory text to paragraph (f) to read as set forth below,
■ o. Remove paragraph (f)(1),
■ p. Redesignate paragraph (f)(2) as paragraph (f)(1) and amend newly designated paragraph (f)(1) in the first sentence, by removing the words ''For sugar-related loans, the'' and adding, in their place, the word ''The'',
■ q. Redesignate paragraph (f)(4) as paragraph (f)(2) and remove the words ''For sugar-related loans,'' and add, in their place, the words ''Sugar storage facility'',
■ r. Revise paragraph (f)(3) introductory text to read as set forth below, and
■ s. Add paragraph (g) to read as set forth below.

§ 1436.6 Eligible storage or handling equipment.

(a) For all eligible facility loan commodities, except sugar and fruits and vegetables, loans may be made only for the purchase and installation of eligible storage facilities, and permanently affixed drying and handling equipment, or for the remodeling of existing storage facilities or permanently affixed drying and handling equipment as provided in this section. The loan collateral must be used for the purpose for which it was delivered, erected, constructed, assembled, or installed for the entire term of the loan. Eligible storage and handling facilities include the following:

* * * * *

(2) New oxygen-limiting storage structures or remanufactured oxygen-limiting storage structures built to the original manufacturer's design specifications using original manufacturer's rebuild kits or kits from a supplier approved by the Deputy Administrator, Farm Programs, and other upright silo-type structures designed for whole grain storage or other than whole grain storage and with a useful life of at least 15 years; and

* * * * *

(5) New structures suitable for storing hay that are built according to acceptable design guidelines from the Cooperative State Research, Education, and Extension Services (CSREES) or land-grant universities and with a useful life of at least 15 years; and

(6) New structures suitable for storing renewable biomass that are built according to acceptable industry guidelines and with a useful life of at least 15 years.

(b) For all eligible facility loan commodities, except sugar and fruits and vegetables, the calculation of the loan amount may include costs associated with building, improving, or renovating an eligible storage or handling facility, including:

* * * * *

(6) Flooring appropriate for storing hay and renewable biomass suitable for the region where the facility is located and designed according to acceptable guidelines from CSREES or land-grant universities.

(c) For all eligible facility loan commodities, except sugar and fruits and vegetables, no loans will be made for installation or related costs of:

* * * * *

(3) Used structures or handling equipment, not including remanufactured oxygen-limiting storage structures built to the manufacturer's original design specifications as specified in paragraph (a)(2) of this section;

* * * * *

(5) Storage structures to be used as a commercial facility. Any facility that is in working proximity to any commercial storage operation will be considered to be part of a commercial storage operation; and

* * * * *

(d) Loans for all eligible facility loan commodities, except sugar and fruits and vegetables, may be approved for financing additions to or modifications of an existing storage facility with an expected useful life of at least 15 years if the county committee determines there is a need for the capacity of the structure, but loans will not be approved solely for the replacement of

worn out items such as motors, fans, or wiring.

* * * * *

(f) The provisions of this paragraph apply only to sugar storage facility loans.

* * * * *

(3) No sugar storage facility loans will be made for:

* * * * *

(g) The provisions of this paragraph apply only to fruit and vegetable cold storage facility loans.

(1) For cold storage facility loans, the loan amount may include costs associated with the purchase, installation, building, improving, remodeling, or renovating an eligible storage or handling facility. Costs associated with the construction of a permanently installed cold storage facility include, but are not limited to, the following: An insulated cement slab floor, insulation for walls and ceiling (including, but not limited to, loose fill cellulose, foam insulation sheets, sprayed-on and foam-in-place materials), and a vapor barrier.

(2) Eligible facilities include, but are not limited to, the following:

(i) A new cold storage facility of wood pole and post construction, steel, or concrete, that is suitable for storing the fruits and vegetables produced by the borrower and with a useful life of at least 15 years;

(ii) New walk-in prefabricated permanently installed cold storage coolers that are suitable for storing the producer's fruits and vegetables and with a useful life of at least 15 years;

(iii) Permanently affixed equipment necessary for a cold storage facility such as refrigeration units or system and circulation fans;

(iv) Permanently installed equipment to maintain or monitor the quality of produce stored in a cold storage facility;

(v) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of a cold storage facility.

(3) For cold storage facility loans, loans may be approved for financing additions or modifications to an existing storage facility with an expected useful life of at least 15 years if CCC determines there is a need for the capacity of the structure.

(4) No cold storage facility loans will be made for:

(i) Portable structures;

(ii) Portable handling and cooling equipment;

(iii) Used or pre-owned structures, or cooling and handling equipment; or

(iv) Structures that are not suitable for a fruit or vegetable cold storage facility.

■ 8. Revise § 1436.7 to read as set forth below:

§ 1436.7 Loan term.

(a) For eligible facility loan commodities other than sugar, the term of the loan will be 7, 10, or 12 years, based on the total loan principal, from the date a promissory note and security agreement is completed on both the partial and final loan disbursements. The applicant will choose, if applicable, a loan term when submitting the loan application and total cost estimates.

(1) For a loan with the principal of $100,000 or less, the term is 7 years.

(2) For loans from $100,000.01 through $250,000, the borrower will choose a term of 7 or 10 years.

(3) For loans from $250,000.01 through $500,000, the borrower will choose a loan term of 7, 10, or 12 years.

(b) No extensions of the loan term will be granted. The loan balance and all related costs are due at the end of the loan term.

(c) For a sugar-related loan:

(1) CCC, at its discretion, may authorize a maximum loan term of 15 years. The minimum loan term of a sugar-related loan is 7 years.

(2) The loan balance and costs are due at the end of the loan term, which will be established on the date the promissory note and security agreement is executed.

■ 9. Revise § 1436.8 to read as follows:

§ 1436.8 Security for loan.

(a) Except as agreed to by CCC, all loans must be secured by a promissory note and security agreement covering the farm storage facility and such other assurances as CCC may demand, subject to the following:

(1) The promissory note and security agreement must grant CCC a security interest in the collateral and must be perfected in the manner specified in the laws of the State where the collateral is located.

(2) CCC's security interest in the collateral must be the sole security interest in such collateral except for prior liens on the underlying real estate that by operation of law attach to the collateral if it is or will become a fixture. If any such prior lien on the real estate will attach to the collateral, a severance agreement must be obtained in writing from each holder of such a lien, including all government or USDA agencies. No additional liens or encumbrances may be placed on the storage facility after the loan is approved unless CCC approves otherwise in writing.

(b) For any loan amounts of $50,000 or less, CCC will not require a severance agreement from the holder of any prior lien on the real estate parcel on which the storage facility is located, if the borrower:

(1) Agrees to increase the down payment on the storage facility loan from 15 percent to 20 percent; or

(2) Provides other security such as an irrevocable letter of credit, bond, or other form of security, as approved by CCC.

(c) For loan amounts exceeding $50,000, or when the aggregate outstanding balance will exceed $50,000 or for loans in which the approving county or State committee determines, as a result of financial analysis, that additional security is required, a lien on the real estate parcel on which the farm storage facility is located is required in the form of a real estate mortgage, deed of trust, or other security instrument approved by USDA's Office of the General Counsel, provided further that:

(1) CCC's interest in the real estate must be superior to all other liens, except a loan may be secured by a junior lien on real estate when the loan is adequately secured and a severance agreement is obtained from prior lien holders.

(2) A loan will be considered to be adequately secured when the real estate security for the loan is at least equal to the loan amount.

(3) If the real estate is covered by a prior lien, a lien waiver may be obtained by means of a subordination agreement approved for use in the State by USDA's Office of the General Counsel. CCC will not require such an agreement from any agency of USDA.

(d) Title insurance or a title opinion is required for loans secured by real estate.

(e) Real estate liens, with prior CCC approval, may cover land separate from the collateral if a lien on the underlying real estate is not feasible and if:

(1) The borrower owns the separate acreage and the acreage is not subject to any other liens or mortgages that are superior to CCC's lien interest and

(2) The acreage is of adequate size and value at the time of the application as determined by the county committee to adequately secure and insure repayment of the loan.

(f) A borrower, in lieu of such liens required by this section, may provide an irrevocable letter of credit, bond, or other form of security, as approved by CCC.

(g) If an existing structure is remodeled and an addition becomes an attached, integral part of the existing storage structure, CCC's security interest will include the remodeled addition as well as the existing storage structure.

(h) For all farm storage facility loans, except sugar loans, the borrower must pay the cost of loan closings by attorneys, title opinions, title insurance, title searches, filing, and recording all real estate liens, fixture filings, appraisals if requested by the borrower, and all subordinations. CCC will pay costs relating to credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

(i) All loans of $50,000 or less that are secured with collateral with no resale value, as determined by CCC, may require additional security.

(j) For sugar storage facility loans, in addition to other requirements in this section, additional security, including real estate, chattels, crops in storage, and other assets owned by the applicant, is required if deemed necessary by CCC to adequately secure the loan. A sugar storage facility loan will generally be considered to be adequately secured when the CCC-determined value of security for the loan is equal to at least 125 percent of the loan amount.

(k) For sugar storage facility loans, paragraph (h) of this section is not applicable. However, the borrower must pay all loan making fees and closing costs. This includes, but is not limited to, attorney fees for loan closings, environmental assessments and studies, chattel and real estate appraisals, title opinions, title insurance, title searches, and filing and recording all real estate liens, fixture filings, subordinations, credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

■ 10. Revise § 1436.9 to read as follows:

§ 1436.9 Loan amount and loan application approvals.

(a) The cost on which the loan will be based is the net cost of the eligible facility, accessories, and services to the applicant after discounts and rebates, not to exceed a maximum per-bushel, -ton or, -cubic foot cost established by the FSA State committee.

(b) The net cost for all storage facilities and handling equipment:

(1) May include the following: All real estate lien related fees paid by the borrower, including attorney fees, except for filing fees; environmental and historic review fees including archaeological study fees; the facility purchase price; sales tax; shipping; delivery charges; site preparation costs; installation cost; material and labor for concrete pads and foundations; material and labor for electrical wiring; electrical motors; off-farm paid labor; on-farm site preparation and construction equipment costs not to exceed commercial rates approved by the county committee; and new on-farm material approved by the county committee.

(2) May not include secondhand material or any other item determined by the approving authority to be ineligible for loan.

(c) The maximum total principal amount of the farm storage facility loan is 85 percent of the net cost of the applicant's needed storage or handling facility, including equipment, not to exceed $500,000 per loan.

(d) The storage need requirement for eligible facility loan commodities will be determined as follows:

(1) For facility loan commodities, except sugar and fruits and vegetables:

(i) Multiply the average of the applicant's share of the acres farmed for the most recent three years for each type of facility loan commodity requiring suitable storage at the proposed facility;

(ii) By a yield determined reasonable by the county committee;

(iii) Multiply by two (for 2 years production); and

(iv) Subtract existing storage capacity in the units of measurement, such as bushels, tons, or cubic feet, for the type of storage needed to determine remaining storage need.

(v) Compare capacity of proposed facility with storage need (calculated as specified in paragraphs (d)(1)(i)–(iv) of this section) to determine if applicant is eligible for additional storage.

(2) For sugar storage facility loans,

(i) Identify past processing volume and marketing allotments;

(ii) Use the processor's projection of processing volume, available storage capacity, volume not to be marketed due to marketing allotment, and other appropriate factors affecting the processor's storage need to estimate the storage need requirement, and

(iii) Compare capacity of proposed facility with storage need (estimated as specified in paragraphs (d)(2)(i)–(ii) of this section) to determine if additional storage is required.

(3) For cold storage facilities for fruits and vegetables:

(i) Multiply the average of the applicant's share of the acres farmed for the most recent three years for each eligible fruit and vegetable commodity requiring cold storage at the proposed facility;

(ii) By a yield determined reasonable by the county committee;

(iii) Determine cold storage needed (calculated as specified in paragraphs (d)(3)(i)–(ii) of this section) with the assistance of CSREES, land-grant university, or ARS publications; and

(iv) Subtract existing cold storage capacity to determine remaining storage need.

(v) Compare capacity of proposed cold storage facility with cold storage need (calculated as specified in paragraphs (d)(3)(i)–(iv) of this section) to determine if applicant is eligible for additional cold storage.

(4) For all eligible facility loan commodities, except sugar, if acreage data is not available, including prevented planted acres, or data is not applicable to the storage need, a reasonable acreage projection may be made for newly acquired farms, changes in cropping operations, or in facility loan commodity crops being grown for the first time.

(e) When a storage structure has a larger capacity than the applicant's needed capacity, as determined by CCC, the net cost eligible for a loan will be prorated. Only costs associated with the applicant's needed storage capacity will be considered eligible for loan under this part.

(f) Any borrower with an outstanding loan must use the financed structure only for the storage of eligible facility loan commodities. If a borrower uses such structure for other purposes such as office space or display area, the loan amount will be adjusted for the ineligible space as determined by CCC.

(g) The FSA county committee may approve applications, if loan funds are available, up to the maximum approval amount unless the Deputy Administrator, Farm Programs, or the FSA State committee establishes a lower limit for county committee approval authority.

(h) Farm storage facility loan approvals, for all eligible facility loan commodities except sugar, will expire 4 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee. A second 4 month extension, for a total of 12 months from the original approval date, may be approved by the FSA State Committee. This authority will not be re-delegated. Sugar storage facility loan approvals will expire 8 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee.

(i) For sugar storage facility loans, paragraphs (c) and (g) of this section do not apply.

(j) For sugar storage facility loans, the agency approval officials may only approve loans, subject to available funds.

§ 1436.10 [Amended]

■ 11. Amend § 1436.10 as follows:

■ a. In paragraph (a), remove the word ''shall'' and add, in its place, the word ''will'' and remove the words ''before the loan is disbursed'' and add, in their

place, the words ''before either the partial or final loan disbursements'' and

■ b. In paragraph (b), remove the word ''shall'' and add, in its place, the word ''must.''

■ 12. Revise § 1436.11 to read as follows:

§ 1436.11 Disbursements and assignments.

(a) At the request of the borrower, one partial disbursement of loan principal and one final loan disbursement will be available. The partial loan disbursement will be made to facilitate the purchase and construction of an eligible facility and will be made after the approved applicant has completed construction on part of the structure. County FSA personnel will inspect and verify the amount of construction completed.

(1) The amount of the partial loan disbursement will be determined by CCC and made after the borrower provides acceptable documentation for that portion of the completed construction to the County Committee.

(2) Security required for the amount of the partial loan disbursement will be required before the partial loan disbursement is finalized.

(3) The final disbursement of the loan by CCC will be made after the farm storage facility has been completely and fully delivered, erected, constructed, assembled, or installed and a CCC representative has inspected and approved such facility.

(4) All additional security needed to fully secure both the partial and final loan disbursements must be received before the final loan disbursement.

(b) Both the partial and final loan disbursements will be made only if the borrower furnishes satisfactory evidence of the total cost of the facility and payment of all debts on the facility in excess of the amount of the loan. If deemed appropriate by CCC, the partial and final disbursement may have separate notes and separate security instruments.

(c) Both the partial and final loan disbursement will be made jointly to the borrower and the contractor or supplier, except disbursement may be made to the borrower solely where CCC determines, based upon information made available to CCC by the borrower, that the borrower has paid the contractor or supplier all amounts that are due and owing with respect to the facility and that all applicable liens, security interests, or other encumbrances have been released.

(d) A release of liability will be required from all contractors and suppliers providing goods and services to the loan applicant.

(e) Loan proceeds cannot be assigned.

(f) For sugar storage facility loans, only one disbursement will be made and such disbursement will be regarded as a final disbursement.

■ 13. Revise § 1436.12 to read as follows:

§ 1436.12 Interest and fees.

(a) Loans will bear interest at the rate equivalent, as determined by CCC, to the rate of interest charged on Treasury securities of comparable term and maturity on the date the loan is initially approved.

(b) The interest rate for each loan will remain in effect for the term of the loan.

(c) Each borrower on a loan application must pay a non-refundable application fee in such amount determined appropriate by CCC; the fee will be not less than $100 per borrower. The loan application fee is determined based on the cost of the fees associated with the loan, including, but not limited to, the cost to CCC for lien searches, security filings, and credit reports.

(d) For sugar storage facility loans, paragraph (c) of this section does not apply.

■ 14. Amend § 1436.13 as follows:

■ a. In paragraph (a), in the second sentence, remove the words ''the loan,'' and add, in their place, the words ''each of the partial and final loan disbursements,''

■ b. In paragraph (b), in the second sentence, remove the word ''Repayment shall'' and add, in its place, the words ''Each payment will'',

■ c. Revise paragraph (c) to read as set forth below,

■ d. In paragraph (d), remove the word ''shall'' and add, in its place, the word ''will'',

■ e. In paragraph (e), remove the word ''operation'' and add, in its place, the word ''facility'' and remove the words ''dryers or processing plants.'' and add, in their place, the words ''dryers, processing plants, or retail or wholesale cold storage facilities.'',

■ f. In paragraph (f)(2), remove the word ''debtors'' and add, in its place, the word ''debtor's,'' and

■ g. In paragraph (h), remove the word ''shall'' and add, in its place, the word ''will''.

§ 1436.13 Loan installments, delinquency, and acceleration of maturity date.

* * * * *

(c) When installments are not paid on the due date:

(1) CCC will generally mail a demand for payment to the debtor after the due date has passed.

(2) If the installment is not paid within 30 calendar days of the due date or if a new due date acceptable to CCC has not been established based on a financial plan submitted by the debtor, CCC may send two subsequent written demands at approximately 30 calendar day intervals unless CCC needs to take other action to protect the interests of CCC.

(3) If the debtor files an appeal according to § 1436.18, CCC will generally cease collection action until the appeal process is complete, however, CCC may withhold any payments due the debtor and, depending on the outcome of the appeal, any payments due the debtor may later be offset and applied to reduce the indebtedness.

(4) In lieu of a foreclosure on the collateral or the land securing a loan in the case of a delinquency, CCC may permit a rescheduling of the debt or other measures consistent with the collection of other debts under the provisions of part 1403 of this chapter. Any rescheduling or alternate repayment arrangements will be permitted only with prior approval from the Deputy Administrator, Farm Programs. Alternately, CCC may implement such other collection procedures as it deems appropriate.

* * * * *

§ 1436.14 [Amended]

■ 15. Amend § 1436.14 by adding the words ''or land'' immediately after the word ''collateral'' both times it appears and in the second sentence, remove the word ''shall'' both times it appears, and add, in its place, the word ''will''.

■ 16. Amend § 1436.15 as follows:

■ a. In paragraphs (a), (b), (c), and (e), remove the word ''shall'' each time it appears and add, in its place, the word ''will'' and

■ b. Revise paragraph (f) to read as set forth below:

§ 1436.15 Maintenance, liability, insurance, and inspections.

* * * * *

(f) For sugar storage facility loans, in addition to the requirements of paragraph (d) of this section, sugar processors must also insure the contents of storage structures used as collateral for a sugar storage facility loan against all perils.

■ 17. Amend § 1436.16 as follows:

■ a. Revise the section heading to read as set forth below,

■ b. In paragraph (a)(2), second sentence, remove the word ''state'' and add, in its place, the word ''State'',

■ c. In paragraph (a)(3), introductory paragraph, second sentence, remove the word ''shall'' and add, in its place, the word ''will'',

■ d. In paragraph (a)(4), remove the word ''nonmovable'' and add, in its place, the words ''non-movable or non-salable'',
■ e. In paragraph (a)(5), introductory text, second sentence, remove the word ''shall'' and add, in its place, the word ''will'',
■ f. In paragraph (b)(1) remove the word ''shall'' both times it appears and add, in its place, the word ''must'',
■ g. In paragraph (b)(2), remove the word ''shall'' and add, in its place, the word ''will'',
■ h. In paragraph (c), second sentence, remove the word ''shall'' both times it appears and add, in its place, the word ''must'' and remove the word ''borrowers'' and add, in its place, the word ''borrower's''
■ i. Redesignate paragraph (d) as paragraph (e),
■ j. Add new paragraph (d) to read as set forth below, and
■ k. In redesignated paragraph (e) remove the word ''shall'' and add, in its place, the word ''will''.

§ 1436.16 Foreclosure, liquidation, assumptions, sales or conveyance, or bankruptcy.

* * * * *

(d) If any significant changes are made to the legal or operating status of the farming operation with an outstanding Farm Storage Facility Loan, the borrower must do one of the following:

(1) Find an eligible borrower or entity to assume the loan as specified in paragraph (b) of this section,

(2) Repay the loan, or

(3) Undergo new financial analysis, as approved and determined by CCC, to ensure CCC's interests are protected and that the current borrower is in a position to continue making the scheduled loan payments.

* * * * *

1436.19 [Amended]

■ 18. Amend § 1436.19 as follows:
■ a. In paragraph (a), first sentence, by removing the word ''shall'' and adding, in its place, the word ''will'' and by adding the sentence ''FSFL borrowers are subject to the nondiscrimination provisions applicable to Federally assisted programs contained in 7 CFR parts 15 and 15b.'' at the end and
■ b. In paragraph (b), by removing the words ''national origin, sex, marital status, or'' and adding, in their place, the words ''national origin, disability, sex, marital status, familial status, parental status, sexual orientation, genetic information, political beliefs, reprisal, or'' and by adding at the end the sentence ''FSFL is subject to the nondiscrimination provisions applicable to Federally conducted programs contained in 7 CFR parts 15d and 15e.''

Signed in Washington, DC, on August 11, 2009.

Jonathan W. Coppess,

Executive Vice President, Commodity Credit Corporation and Administrator, Farm Service Agency.

[FR Doc. E9–19652 Filed 8–17–09; 8:45 am]

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DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 313 and 315

[Docket No. 090429810–91212–02]

RIN 0610–AA65

Revisions to the Trade Adjustment Assistance for Firms Program Regulations and Implementation Regulations for the Community Trade Adjustment Assistance Program

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: On May 5, 2009, the Economic Development Administration ('EDA') published a notice of proposed rulemaking to reflect the amendments made to the Trade Act of 1974, as amended, by the Trade and Globalization Adjustment Assistance Act of 2009 ('TGAAA'), which was included as subtitle I within the American Recovery and Reinvestment Act of 2009. The notice of proposed rulemaking provided a public comment period from May 5, 2009 through June 4, 2009. The TGAAA provides that the Secretary of Commerce must establish the Community Trade Adjustment Assistance Program by August 1, 2009, under which EDA would provide technical assistance under section 274 of the Trade Act to communities impacted by trade to facilitate the economic adjustment of those communities. The TGAAA amendments to the Trade Act took effect on May 17, 2009, 90 days after enactment. As a result of the enactment of the TGAAA, EDA promulgates this final rule to provide regulations to implement the Community Trade Adjustment Assistance Program and makes specific changes to the Trade Adjustment Assistance for Firms Program regulations.

DATES: This rule is effective as of August 18, 2009.

FOR FURTHER INFORMATION CONTACT: Jamie Lipsey, Attorney Advisor, Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington DC 20230; *telephone:* (202) 482–4687.

SUPPLEMENTARY INFORMATION:

Background

EDA published a notice of proposed rulemaking (the 'NPRM') in the **Federal Register** (74 FR 20647) on May 5, 2009. The NPRM reflects the amendments made to the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*) (the 'Trade Act'), by the Trade and Globalization Adjustment Assistance Act of 2009 (the 'TGAAA'), which was included as subtitle I to the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, 123 Stat. 115, at 367). The TGAAA authorized the Trade Adjustment Assistance for Communities ('Community TAA') Program and made amendments to certain provisions affecting the Trade Adjustment Assistance for Firms ('TAAF') Program, which EDA currently administers through a network of 11 University-affiliated and non-profit Trade Adjustment Assistance Centers (each, a 'TAAC') located throughout the nation.

This final rule promulgates the Community TAA Program regulations and makes specific changes to the TAAF Program regulations, both of which implement the amendments to the Trade Act made by the TGAAA. It also reflects EDA's current practices and policies in administering the TAAF Program that have evolved since the promulgation of EDA's current regulations. Chapter 3 of title II of the Trade Act authorizes the TAAF Program, under which technical assistance is provided to Firms that have lost domestic sales and employment due to increased imports of similar or competitive goods. Chapter 4 of title II of the Trade Act establishes the Community TAA Program, which is designed to help local economies adjust to changing trade patterns through the coordination of Federal, State, and local resources and the creation and implementation of community-based development strategies to help address trade impacts.

Capitalized terms used but not otherwise defined in this final rule have the meanings ascribed to them in EDA's regulations set out in 13 CFR chapter III (*see, e.g.,* 13 CFR 300.3, 303.2, 315.2, and 315.15). A complete discussion of the changes made to EDA's regulations was provided in the NPRM and is not repeated here.

Response to Comments

A 31-day public comment period, from May 5, 2009 through June 4, 2009, followed the publication of the NPRM. EDA received a small number of public comments on different portions of the NPRM. All comments received, which were from the Directors of three TAACs, related to the TAAF Program. EDA did not receive any comments related to the Community TAA Program. A summary of the comments and EDA's response are provided below.

Section 315.2—Definitions

EDA received one comment from the Director of the Rocky Mountain TAAC that stated the following: ''The definition of '*Absolutely'* has been determined by EDA to mean five percent. This is an arbitrary number that the TAACs at times have been told is no longer valid. The intended result is to only accept firms that are truly impacted. The actual result is usually several months' delay in assistance for the firm until sales and employment declines enough to satisfy the five percent decline. This delay causes unnecessary hardship to the firm. 'Absolutely' should not be defined in this document, but be determined on a case-by-case basis, which is customary with other similar definitions like 'significant,' which is purposely not defined.''

The proposed revision to the definition of '*Decreased Absolutely'* does not in any way alter the meaning of the term 'Decreased Absolutely' or EDA's current administration of the TAAF Program. EDA replaced the word 'irrespective' in paragraph (1) with the word 'independent' for increased clarity and ease of understanding. Although the NPRM did not propose a revision to the provision of the definition that the commenter addresses, EDA has reviewed the comment and addresses it here. Requiring a Firm to show at least a five percent decline in sales and employment to be eligible for assistance under the TAAF Program is consistent with the need to marshal limited TAAF Program resources. In EDA's experience, the five percent minimum threshold helps to ensure that import-impacted Firms receive limited program resources.

However, EDA recognizes that Firms' situations differ, and there are instances when an import impact will not manifest as such a quantifiable decline. Accordingly, EDA provided case-by-case flexibility in the interim final regulations published in the **Federal Register** on October 22, 2008 (73 FR 62858). In the October 22, 2008 interim final rule, EDA revised the definitions of Decreased Absolutely and '*Significant Number or Proportion of Workers,'* which requires eligible Firms to demonstrate a workforce decline of at least five percent, to include the phrase, ''unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act.'' This added language provides for the threshold five percent, but allows for case-by-case flexibility when the threshold may be unduly restrictive. In practice, the revised definitions have been effective to avoid unjust denials and efficiently use limited program financial and staff resources.

EDA received the following comment from the Director of the Northwest TAAC regarding the proposed definition of '*Increase in Imports,'* which was revised to include a discussion of the type of evidence EDA may consider in determining whether an Increase in Imports has occurred in a particular case. The proposed revision adds the new requirement from section 1863 of the TGAAA to permit EDA to determine that an Increase in Imports exists if customers accounting for a significant percentage of the decline in a Firm's sales or production certify that their purchases of imported '*Like Articles or Services'* have increased absolutely or relative to the acquisition of such Like Articles or Services from suppliers in the United States. The commenter stated: ''EDA's use of the word 'certification' in this paragraph on the definition of Increase in Imports is confusing. If what is meant is some sort of 'writing' from the customer of the petitioning firm then EDA is misconstruing the intent of Congress. To require such a 'writing' from a customer will make it almost impossible to use this method to show an increase in imports. Customers are very reluctant to admit they are purchasing imports out of fear there will be some sort of retribution placed upon them. Congress did not intend to make certification of service firms more difficult than manufacturing firms. (*See* section 288 of the Act 'sense of Congress.') Since there are no HTS statistics for service imports, customer verification will be the primary method. However, to require a 'writing' in order for a customer to 'certify' their purchase of imports will not work. Besides, the petitioning firm, the petition preparer and the TAAC director already give their assurance as to the accuracy and completeness of the petition.''

EDA believes that the amendment made by section 1863 of the TGAAA requires a written customer certification in certain circumstances. The revised definition of Increase in Imports implements section 251 of the Trade Act, as amended by section 1863 of the TGAAA, to provide that certification by a Firm's customers of increased imports to the Secretary is a method by which EDA may determine the existence of an Increase in Imports. Previously, the method to determine whether an Increase in Imports had occurred was left to the Secretary's discretion, and EDA used a combination of Harmonized Tariff Schedule ('HTS') data and the TAAC's interviews of the Firm's customers. This dual information gathering helps demonstrate import impacts on two levels: using HTS data helps show overall import trends in a manufacturing Firm's market, while customer interviews provide confirmation of trade impacts at the local level. The HTS comprises a hierarchical structure that classifies goods into specific 'buckets' using criteria such as name, use, and material used in a good's description. Using HTS data works well for manufacturing companies because the goods that are produced allow such Firms to fit within a specific HTS 'bucket,' and the trend data can be readily accessed. To understand the local forces affecting a Firm, the TAAC interviews the Firm's customers.

However, HTS data for a '*Service Sector Firm'* is extremely broad and does not allow for such a snapshot, which makes it infeasible as a method to assess import trends for Service Sector Firms. Other reliable data for assessing how imports affect service sector industries do not yet exist to provide information on import trends within a given Service Sector Firm's market. The TGAAA specifies the customer certification method to address this lack of industry data and provide a reliable method to assess the import impact(s). The plain meaning of 'certify' is to make a formal acknowledgment, and such certification must be in writing.

The commenter also expressed concern that customers will be ''very reluctant to admit they are purchasing imports out of fear there will be some sort of retribution placed on them.'' As far as EDA is aware, information obtained from a Firm's customers and others has never been and will not be used for any other purpose than to make the required eligibility determinations in order to certify a Firm under the TAAF Program.

The commenter noted that a written certification contravenes the 'Sense of Congress' expressed in the Trade Act, as amended by the TGAAA. EDA intends

to apply the provisions of chapter 3 of the Trade Act with the utmost regard to Firms, but it also must comply with the directly expressed requirements of the TGAAA, which specify customer certifications to the Secretary. EDA is construing the provision narrowly and making its application minimally burdensome. For example, a customer certification will be required only to certify: (i) A manufacturing Firm when the applicable HTS data does not show an Increase in Imports; and (ii) Service Sector Firms until applicable HTS data become available. Also, EDA will accept customer certifications by email.

Finally, the commenter indicated that requiring customer certification is redundant since the Firm and the TAAC already certify to the accuracy and completeness of a petition. EDA notes that this requirement comes directly from the statute, as section 1863 of the TGAAA specifies that ''customers accounting for a significant percentage of the decrease in the sales or production of the firm'' must ''certify to the Secretary that such customers have increased their imports of such articles or services from a foreign country.''

Section 315.6—Firm Eligibility for Adjustment Assistance

EDA received one comment from the Director of the Midwest TAAC requesting clarification on existing Firm matching share requirements as set out in section 315.6(c)(2)(i). The comment states the following: ''Does section 315.6(b)(2)(i) remove the $150,000 cap on total AP requests?''

The NPRM did not propose changes to this provision, however, EDA reviewed and addresses the question here. After a Firm is certified as eligible for assistance under the TAAF Program, the Firm must develop an EDA-approved Adjustment Proposal, which is a strategy document designed to map out a path for the Firm's recovery. In an effort to marshal limited resources, EDA's general policy is to limit the amount of Federal assistance provided under the Adjustment Proposal to $150,000, which consists of $75,000 in EDA funds and $75,000 in Firm matching funds. EDA does not contemplate raising the $150,000 cap at this time.

Section 315.7—Certification Requirements

EDA received one comment from the Director of the Rocky Mountain TAAC on the existing interim sales or production decline Firm certification option, which was relocated, but not substantively amended by the NPRM and is set out in section 315.7(4). The comment stated: ''The six month interim decline is useful, but not responsive enough to deal with a firm facing a rapid decline. A three month interim decline would provide for more timely assistance, and minimize unnecessary hardship to the firm.''

The NPRM did not propose a revision to this provision, however, EDA has reviewed and addresses the comment in this final rule. EDA assumes that the commenter is referring to the interim sales or production and employment decline certification options in EDA's current regulations, which allow a Firm to pursue certification without at least a year of data showing sales or production and employment decline. The interim decline options are a regulatory rule; they are not statute-based. The addition of the interim decline options to the TAAF Program regulations was based on EDA's interpretation of the Trade Act's language and intent regarding the *threat* of employment separation and the need to provide proactive assistance. EDA extrapolated that since the Trade Act also focuses on the threat of harm, if a Firm can show a precipitous decline over six months, then it is a reasonable assumption that the pattern may continue.

Although the interim decline options are not statute-derived, Congress has consistently appropriated the TAAF Program with those options in place. EDA does not believe that three months provide enough data to reasonably foresee a sales or production and employment decline, and does not believe cutting the interim decline options in half to three months will provide optimal program results.

Section 315.8—Processing Petitions for Certifications

EDA received two similar comments from the Directors of the Rocky Mountain and Northwest TAACs on the proposed revision to section 315.8, which provides that EDA has 40 days instead of 60 days from the date EDA accepts a petition to make a certification determination to implement section 251(d) of the Trade Act, as amended by section 1867 of the TGAAA. The commenters stated: ''This section should contain a maximum number of days from receipt of a petition by EDA to 'accept' the petition for processing. To allow EDA an unlimited time to 'accept' a petition defeats the intent of Congress to only allow 40 days for EDA to make a determination to certify or reject the petition. (*see* section 288 of Act).''

In practice, many petitions that are submitted to EDA are incomplete or otherwise deficient in some manner. EDA has allowed and continues to allow the TAACs to informally submit a petition and works with the TAAC to resolve any deficiencies. After all deficiencies have been resolved, EDA accepts the petition, which starts the certification determination clock. EDA believes that automatically accepting all petitions will result in a higher rate of petition denials. Once a petition has been denied, the petitioning Firm must wait for one year from the date of denial before re-applying. Although EDA may waive the one-year limitation for good cause, EDA believes that the flexibility of the current system best serves the interests of Firms. This flexibility allows EDA to more effectively achieve the Congressional intent, which is to assist trade-impacted Firms with a minimum of delay and administrative burden. Firms likely to suffer the greatest trade-induced stress may have difficulty responding expeditiously to requests for clarification or to provide documentation and are most likely to exceed a hard and fast 40-day limit. The new regulations should not impose new response demands on already stressed Firms.

Section 315.10—Loss of Certification Benefits

EDA received the following comment from the Director of the Northwest TAAC on proposed section 315.10(d), which was revised to reflect EDA's current practice that a Certified Firm has five, not two, years from the date upon which EDA approves an Adjustment Proposal to complete work on the Adjustment Proposal: ''There should be a subpart '(e)'. This subpart (e) should state a firm has five years from the date their AP is approved to complete all parts of the implementation as found within its AP, without approval from EDA for going beyond this five year period to implement all aspects of the approved AP. This would put these regulations in compliance with what is actually occurring at the present time.''

EDA believes that the proposed revision reflects current practice and that another subpart is not necessary.

Changes From the NPRM

After publication of the NPRM, EDA discovered that the proposed revisions to the Firms' 24- or 36-month sales decline certification requirements, set out in section 315.7(b)(2) and (3), do not reflect the 'average annual' language as provided in section 251 of the Trade Act, as amended by section 1862 of the TGAAA. Therefore, in this final rule, EDA revises section 315.7 to include the 'average annual' language, thereby

succeeding and nullifying the revision proposed in the NPRM.

Classification

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). In the alternative, EDA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness. EDA is required by the Trade and Globalization Adjustment Assistance Act of 2009, which was included as subtitle I within the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, 123 Stat. 115, at 401), to implement these regulations by August 1, 2009. If this rulemaking was delayed to allow for a 30-day delay in effectiveness, EDA would not be able to meet its statutory requirement. Therefore, in order to make these regulations effective before August 1, 2009, EDA waives the 30-day in effectiveness and makes this rule effective immediately.

Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act ('PRA'). In regard to the Community TAA Program, the Office of Management and Budget ('OMB') has approved the use of Form ED–900 ('Application for Investment Assistance') under Control Number 0610–0094. Form SF–424 ('Application for Federal Assistance') is approved under OMB Control Number 4040–0004. To estimate burden, EDA examined its experience with its public works and economic adjustment assistance programs, which are authorized under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) ('PWEDA'). The potential demand for programs under PWEDA is, of course, much greater because eligibility is based on general economic distress and is not restricted to trade impact. EDA estimates that demand from trade-impacted areas would constitute a small fraction of all areas experiencing economic distress. Nonetheless, to a certain extent, demand will be elastic depending on the amount of appropriations Congress and the President approve for the Community TAA Program. Because the respondent burden will be similar for applications under the Community TAA Program as it is for applications under EDA's traditional programs, if the Community TAA Program is funded at its authorized level of $150,000,000, EDA estimates that it may receive about 350 responses for a petition for affirmative determination and 300 responses for an implementation grant. EDA estimates that the total annual paperwork burden for a petition for affirmative determination would be about 550 hours and the total annual paperwork burden for an implementation grant application would be about 6,500 hours. In regard to the TAAF Program, the use of Form ED–840P ('Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance') has been approved by OMB under Control Number 0610–0091. In light of the expansion of the TAAF Program to Service Sector Firms and the expansion of the 'look back' periods, EDA estimates the number of respondents who complete petitions for a certification of eligibility will increase more than 100 percent to about 500 respondents and that the total annual paperwork burden would be about 4,100 hours.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Executive Order No. 12866

It has been determined that this final rule is significant for purposes of Executive Order 12866.

Congressional Review Act

This final rule is not 'major' under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in Executive Order 13132 to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' It has been determined that this final rule does not contain policies that have federalism implications.

List of Subjects

13 CFR Part 313

Trade adjustment assistance for communities, Impacted community, Petition and affirmative determination requirements, Strategic plan, Implementation grant.

13 CFR Part 315

Administrative practice and procedure, Trade adjustment assistance, Eligible petitioner, Firm selection, Certification requirements, Recordkeeping and audit requirements, Adjustment proposals.

Regulatory Text

■ For reasons stated in the preamble, EDA amends chapter III of title 13 of the *Code of Federal Regulations* to add new part 313 and to amend part 315 as follows:

■ 1. Add part 313 to read as follows:

PART 313—COMMUNITY TRADE ADJUSTMENT ASSISTANCE

Subpart A—General Provisions

Subpart B—Participation in the Community Trade Adjustment Assistance Program

Subpart C—Administrative Provisions

Authority: 19 U.S.C. 2341 *et seq.*, as amended by Division B, Title I, Subtitle I, Part II of Pub. L. 111–5; 42 U.S.C. 3211; Department of Commerce Organizational Order 10–4.

Subpart A—General Provisions

§ 313.1 Purpose and scope.

The regulations in this part set forth the responsibilities of the Secretary of Commerce under chapter 4 of title II of the Trade Act concerning Community Trade Adjustment Assistance ('*Community TAA*'). The Community TAA Program is designed to assist Communities impacted by trade with economic adjustment through the coordination of Federal, State, and local resources, the creation of community-based development strategies, and the

development and provision of programs that meet the training needs of workers. The statutory authority and responsibilities of the Secretary of Commerce relating to Community TAA are delegated to EDA. EDA certifies Communities as eligible to apply for assistance under the Community TAA Program, provides technical assistance to Impacted Communities, and provides implementation assistance to Impacted Communities in preparing and carrying out Strategic Plans.

§ 313.2 Definitions.

In addition to the defined terms set forth in § 300.3 of this chapter, the terms used in this part shall have the following meanings:

Agricultural Commodity Producer has the same meaning given to that term in title II, chapter 6, section 291 of the Trade Act.

Community Adjustment Assistance means technical and implementation assistance provided to an Impacted Community under chapter 4 of title II of the Trade Act.

Community means a city, county, or other political subdivision of a State or a consortium of political subdivisions of a State.

Cognizable Certification means a certification:

(1) By the Secretary of Labor that a group of workers in the Community is eligible to apply for assistance under chapter 2, section 223 of the Trade Act;

(2) By the Secretary of Commerce that a Certified Firm (as defined at § 315.2 of this chapter) located in the Community is eligible to apply for Adjustment Assistance in accordance with chapter 3, sections 251–253 of the Trade Act; or

(3) By the Secretary of Agriculture that a group of Agricultural Commodity Producers in the Community is eligible to apply for assistance under chapter 6, section 293 of the Trade Act.

Impacted Community means a Community that is affected by trade to such a degree that the Secretary has made an affirmative determination that it is eligible to apply for assistance under this part.

Strategic Plan means an Impacted Community's plan for improving its economic situation developed in accordance with § 313.6.

Subpart B—Participation in the Community Trade Adjustment Assistance Program

§ 313.3 Overview of Community Trade Adjustment Assistance.

The Community TAA Program is designed to assist Communities impacted by trade to adjust to that impact. The Community TAA Program will be administered in accordance with the following process:

(a) *Determination of eligibility.* First, EDA must make an affirmative determination that the Community is impacted by trade in accordance with § 313.4.

(b) *Provision of technical assistance.* After an affirmative determination is made, EDA will provide the Impacted Community with technical assistance in accordance with § 313.5.

(c) *Strategic Plan development.* An Impacted Community that intends to apply for an implementation grant in accordance with § 313.7 must develop, in accordance with § 313.6, an EDA-approved Strategic Plan.

(d) *Implementation grant.* In accordance with § 313.7, EDA may award an implementation grant to assist an Impacted Community in carrying out a project or program included in a Strategic Plan.

§ 313.4 Affirmative determinations.

(a) *General.* Subject to the availability of funds, a Community may apply for an affirmative determination if:

(1) On or after August 1, 2009, one or more Cognizable Certifications are made with respect to the Community; and

(2) The Community submits the petition at least 180 days after the date of the most recent Cognizable Certification.

(b) *Grandfathered Communities.* If one or more Cognizable Certifications were made with respect to a Community on or after January 1, 2007, and before August 1, 2009, the Community may submit a petition to EDA for an affirmative determination under this section not later than February 1, 2010.

(c) *Affirmative determination petition requirements.* (1) The Community must submit a complete petition to the applicable regional office (or regional offices in the event the Community crosses multiple geographic boundaries) serving the geographic area in which the Community is located. A complete petition for an affirmative determination shall contain the following:

(i) The '*Application for Federal Assistance*' (Form SF–424) that contains such information to allow EDA to determine that the petitioning Community is significantly affected by the threat to, or the loss of, jobs associated with one or more Cognizable Certifications;

(ii) The applicable Cognizable Certification(s) upon which the Community bases its petition; and

(iii) Such other information as EDA considers material.

(2) The petition for affirmative determination must contain information about the impact(s) on the Community from the actual or threatened loss of jobs attributable to trade that led to the applicable Cognizable Certification(s) made by the Secretaries of Labor, Commerce or Agriculture, in order for EDA to determine that the Community is significantly affected. EDA shall measure such impact(s) using the petitioning Community's most recent Civilian Labor Force statistics as reported by the Bureau of Labor Statistics, U.S. Department of Labor, effective at the time of petition for affirmative determination. EDA will obtain the applicable Cognizable Certification from publicly available resources. However, a petitioning Community may also provide copies of the applicable Cognizable Certification to EDA.

(d) *Notification to Community.* Upon making an affirmative determination, EDA shall notify promptly the Community and the Governor of the State in which the Community is located of the means for obtaining assistance under this part and other appropriate economic assistance that may be available to the Community. Such notification will identify the appropriate EDA regional office that will provide technical assistance under § 313.5.

§ 313.5 Technical assistance.

(a) *General.* Once EDA has made an affirmative determination that a Community is an Impacted Community and subject to the availability of funds, EDA shall provide comprehensive technical assistance to:

(1) Diversify and strengthen the economy in the Impacted Community;

(2) Identify significant impediments to economic development that result from the impact of trade on the Impacted Community; and

(3) Develop or update a Strategic Plan in accordance with § 313.6 to address economic adjustment and workforce dislocation in the Impacted Community, including unemployment among agricultural commodity producers.

(b) *Coordination of Federal response.* EDA will coordinate the Federal response to an Impacted Community by:

(1) Identifying Federal, State, and local resources that are available to assist the Impacted Community in responding to economic distress; and

(2) Assisting the Impacted Community in accessing available Federal assistance and ensuring that such assistance is provided in a targeted, integrated manner.

§ 313.6 Strategic Plans.

(a) *General.* An Impacted Community that intends to apply for a grant for implementation assistance under § 313.7 shall develop and submit a Strategic Plan to EDA for evaluation and approval. EDA shall evaluate the Strategic Plan based on the technical requirements set forth in paragraph (c) of this section.

(b) *Involvement of private and public entities.* To the extent practicable, an Impacted Community shall consult with the following entities in developing a Strategic Plan:

(1) Federal, local, county, or State government agencies serving the Impacted Community;

(2) Firms, as defined in § 315.2 of this chapter, including small- and medium-sized Firms, within the Impacted Community;

(3) Local workforce investment boards established under section 117 of the Workforce Investment Act of 1998 (29 U.S.C. 2832);

(4) Labor organizations, including State labor federations and labor-management initiatives, representing workers in the Impacted Community; and

(5) Educational institutions, local educational agencies, or other training providers serving the Impacted Community.

(c) *Technical requirements.* EDA shall evaluate the Strategic Plan based on the following minimum requirements:

(1) An analysis of the capacity of the Impacted Community to achieve economic adjustment to the impact(s) of trade;

(2) An analysis of the economic development challenges and opportunities facing the Impacted Community as well as the strengths, weaknesses, opportunities, and threats facing the Impacted Community;

(3) An assessment of the commitment of the Impacted Community to the Strategic Plan over the long term and the participation and input of members of the Community affected by economic dislocation, including how the Strategic Plan will be integrated effectively with one or more applicable Comprehensive Economic Development Strategies (*'CEDS'*) that have been developed in connection with EDA's economic development assistance programs as set out at § 303.7 of this chapter;

(4) A description of the role and the participation of the entities described in paragraph (b) of this section in developing the Strategic Plan;

(5) A description of the projects to be undertaken by the Impacted Community under its Strategic Plan and how such projects will facilitate the Impacted Community's economic adjustment;

(6) A description of the educational and training programs available to workers in the Impacted Community and the future employment needs of the Community;

(7) An assessment of the cost of implementing the Strategic Plan, including the timing of funding required by the Impacted Community to implement the Strategic Plan and the method of financing to be used to implement the Strategic Plan; and

(8) A strategy for continuing the economic adjustment of the Impacted Community after the completion of the projects described in paragraph (c)(5) of this section.

(d) *Cost sharing limitation.* Assistance awarded to an Impacted Community to develop a Strategic Plan under this section shall not exceed 75 percent of the cost of developing the Strategic Plan. In order to provide funding to as many merit-worthy Impacted Communities as feasible, EDA may base the amount of the Community's required share on the relative distress caused by the actual or threatened decline in the most recent Civilian Labor Force statistics effective on the date EDA receives an application to develop a Strategic Plan.

§ 313.7 Implementation grants for Impacted Communities.

(a) *General.* EDA may provide assistance in the form of a grant under this section to an Impacted Community to help the Community carry out a project or program that is included in a Strategic Plan developed in accordance with § 313.6. Such assistance may include:

(1) Infrastructure improvements, such as site acquisition, site preparation, construction, rehabilitation and equipping of facilities;

(2) Market or industry research and analysis;

(3) Technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or feasibility studies;

(4) Public services;

(5) Training; and

(6) Other activities justified by the Strategic Plan that satisfy applicable statutory and regulatory requirements.

(b) *Application evaluation criteria.* (1) An Impacted Community that seeks to receive an implementation grant under this section shall submit a completed *'Application for Federal Assistance'* (Form ED–900 or any successor form) to the applicable regional office (or regional offices in the event the Community crosses multiple geographic boundaries) serving the geographic area in which the Community is located. A complete application also shall include:

(i) The EDA-approved Strategic Plan that meets the requirements of § 313.6; and

(ii) A description of the project or program included in the Strategic Plan with respect to which the Impacted Community seeks assistance.

(2) EDA will evaluate all applications for the feasibility of the budget presented and conformance with statutory and regulatory requirements. EDA also will consider the degree to which an implementation grant in the Impacted Community will satisfy the evaluation criteria set forth in the applicable FFO announcement.

(c) *Coordination among grant programs.* If an entity in an Impacted Community seeks or plans to seek a Community College and Career Training Grant under section 278 of the Trade Act or a Sector Partnership Grant under section 279A of the Trade Act while the Impacted Community seeks assistance under this section, the Impacted Community shall include in the application for assistance a description of how the Impacted Community will integrate any projects or programs carried out using assistance provided under this section with any projects or programs that may be implemented with other Federal assistance.

(d) *Cost sharing requirement.* (1) If an Impacted Community is awarded an implementation grant under this section, the following requirements shall apply:

(i) *Federal share.* The Federal share of a project or program for which a grant is awarded may not exceed 95 percent of the cost of implementing the project or program; and

(ii) *Community's share.* The Impacted Community must contribute at least five percent of the amount of the implementation grant towards the cost of implementing the project or program for which the grant is awarded.

(2) In order to provide funding to as many merit-worthy Impacted Communities as feasible, EDA may base the amount of the Community's required share on the relative distress caused by the actual or threatened decline in the most recent Civilian Labor Force statistics effective on the date EDA receives an application for an implementation grant.

(e) *Limitation.* An Impacted Community may not be awarded more than $5,000,000 in implementation grant assistance under this section.

§ 313.8 Competitive process.

(a) Applications for assistance to develop a Strategic Plan or for an implementation grant shall be reviewed by EDA in accord with a competitive process as set forth in the applicable FFO, to ensure that EDA awards funds to the most merit-worthy projects.

(b) *Priority for grants to small- and medium-sized Communities.* EDA shall give priority to an application submitted under this part by an Impacted Community that is a small- or medium-sized Community.

(c) *Supplement, not supplant.* The Community TAA Program and any funds appropriated to implement its provisions shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide economic development assistance for Communities.

Subpart C—Administrative Provisions

§ 313.9 Records.

Communities that receive assistance under this part are subject to the records requirements set out in § 302.14 of this chapter.

§ 313.10 Conflicts of interest.

Communities that receive assistance under this part are subject to the conflicts of interest provisions as set out in § 302.17 of this chapter.

§ 313.11 Other requirements.

Communities that receive assistance under this part are subject to the general terms and conditions for Investment Assistance set out in part 302 of this chapter relating to requirements involving the environment (§ 302.1); post-disaster assistance (§ 302.2); public information (§ 302.4); relocation assistance and land acquisition (§ 302.5); Federal policies and procedures (§ 302.6); amendments and changes to awards (§ 302.7); pre-approval costs (§ 302.8); intergovernmental project reviews (§ 302.9); attorneys' and consultants' fees or the employment of expediters (§ 302.10); EDA's economic development information clearinghouse (§ 302.11); project administration, operation, and maintenance (§ 302.12); post-approval requirements (§ 302.18); indemnification (§ 302.19); and civil rights (§ 302.20). In addition, any Property (defined at § 314.1) acquired in connection with Investment Assistance is subject to the property management regulations set out in part 314 of this chapter.

■ 2. Revise part 315 to read as follows:

PART 315—TRADE ADJUSTMENT ASSISTANCE FOR FIRMS

Subpart A—General Provisions

Subpart B—Certification of Firms

Subpart C—Protective Provisions

Subpart D—Adjustment Proposals

Subpart E—Assistance to Industries

Authority: 19 U.S.C. 2341 *et seq.*, as amended by Division B, Title I, Subtitle I, Part II of Pub. L. 111–5; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

Subpart A—General Provisions

§ 315.1 Purpose and scope.

The regulations in this part set forth the responsibilities of the Secretary of Commerce under chapter 3 of title II of the Trade Act concerning Trade Adjustment Assistance for Firms. The statutory authority and responsibilities of the Secretary of Commerce relating to Adjustment Assistance are delegated to EDA. EDA certifies Firms as eligible to apply for Adjustment Assistance, provides technical Adjustment Assistance to Firms and other recipients, and provides assistance to organizations representing trade injured industries.

§ 315.2 Definitions.

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms used in this part shall have the following meanings:

Adjustment Assistance means technical assistance provided to Firms or industries under chapter 3 of title II of the Trade Act.

Adjustment Proposal means a Certified Firm's plan for improving its economic situation.

Certified Firm means a Firm which has been determined by EDA to be eligible to apply for Adjustment Assistance.

Confidential Business Information means any information submitted to EDA or a TAAC by a Firm that concerns or relates to trade secrets for commercial or financial purposes, which is exempt from public disclosure under 5 U.S.C. 552(b)(4), 5 U.S.C. 552b(c)(4) and 15 CFR part 4.

Contributed Importantly, with respect to an Increase in Imports, refers to a cause which is important but not necessarily more important than any other cause. Imports will not be considered to have Contributed Importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat thereof or decline in sales or production would have been essentially the same, irrespective of the influence of imports.

Decreased Absolutely means a Firm's sales or production has declined by a minimum of five percent relative to its sales or production during the applicable prior time period,

(1) Independent of industry or market fluctuations; and

(2) Relative only to the previous performance of the Firm, unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act.

Directly Competitive means imported articles or services that compete with and are substantially equivalent for commercial purposes (*i.e.,* are adapted for the same function or use and are essentially interchangeable) as the Firm's articles or services. Any Firm that engages in exploring or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.

Firm means an individual proprietorship, partnership, joint venture, association, corporation (includes a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree, and includes fishing, agricultural or service sector entities and those which explore, drill or otherwise produce oil or natural gas. *See also* the definition of Service Sector Firm. Pursuant to section 261 of chapter 3 of title II of the Trade Act (19 U.S.C. 2351), a Firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same person, may be considered a single Firm where necessary to prevent unjustifiable benefits. For purposes of receiving

benefits under this part, when a Firm owns or controls other Firms, the Firm and such other Firms may be considered a single Firm when they produce or supply like or Directly Competitive articles or services or are exerting essential economic control over one or more production facilities. Accordingly, such other Firms may include a(n):

(1) *Predecessor*—see the following definition for Successor;

(2) *Successor*—a newly established Firm (that has been in business less than two years) which has purchased substantially all of the assets of a previously operating company (or in some cases a whole distinct division) (such prior company, unit or division, a 'Predecessor') and is able to demonstrate that it continued the operations of the Predecessor which has operated as an autonomous unit, provided that there were no significant transactions between the Predecessor unit and any related parent, subsidiary, or affiliate that would have affected its past performance, and that separate records are available for the Predecessor's operations for at least two years before the petition is submitted. The Successor Firm must have continued virtually all of the Predecessor Firm's operations by producing the same type of products or services, in the same plant, utilizing most of the same machinery and equipment and most of its former workers, and the Predecessor Firm must no longer be in existence;

(3) *Affiliate*—a company (either foreign or domestic) controlled or substantially beneficially owned by substantially the same person or persons that own or control the Firm filing the petition; or

(4) *Subsidiary*—a company (either foreign or domestic) that is wholly owned or effectively controlled by another company.

Increase in Imports means an increase of imports of Directly Competitive or Like Articles or Services with articles produced or services supplied by such Firm. EDA may consider as evidence of an Increase in Imports a certification from the Firm's customers that account for a significant percentage of the Firm's decrease in sales or production that they have increased their purchase of imports of Directly Competitive or Like Articles or Services from a foreign country, either absolutely or relative to their acquisition of such Like Articles or Services from suppliers located in the United States.

Like Articles or Services means any articles or services, as applicable, which are substantially identical in their intrinsic characteristics.

Partial Separation means, with respect to any employment in a Firm, either:

(1) A reduction in an employee's work hours to 80 percent or less of the employee's average weekly hours during the year of such reductions as compared to the preceding year; or

(2) A reduction in the employee's weekly wage to 80 percent or less of his/her average weekly wage during the year of such reduction as compared to the preceding year.

Person means an individual, organization or group.

Record means any of the following:

(1) A petition for certification of eligibility to qualify for Adjustment Assistance;

(2) Any supporting information submitted by a petitioner;

(3) The report of an EDA investigation with respect to petition; and

(4) Any information developed during an investigation or in connection with any public hearing held on a petition.

Service Sector Firm means a Firm engaged in the business of supplying services. For purposes of receiving benefits under this part, when a Service Sector Firm owns or controls other Service Sector Firms, the Service Sector Firm and such other Service Sector Firms may be considered a single Service Sector Firm when they furnish like or Directly Competitive services or are exerting essential economic control over one or more servicing facilities. Such other Service Sector Firm may be a Predecessor, Successor, Affiliate or Subsidiary, each as defined in the definition of Firm.

Significant Number or Proportion of Workers means five percent of a Firm's work force or 50 workers, whichever is less, unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act. An individual farmer or fisherman is considered a Significant Number or Proportion of Workers.

Substantial Interest means a direct material economic interest in the certification or non-certification of the petitioner.

TAAC means a Trade Adjustment Assistance Center, as more fully described in § 315.5.

Threat of Total or Partial Separation means, with respect to any group of workers, one or more events or circumstances clearly demonstrating that a Total or Partial Separation is imminent.

Total Separation means, with respect to any employment in a Firm, the laying off or termination of employment of an employee for lack of work.

§ 315.3 Confidential Business Information.

EDA will follow the procedures set forth in 15 CFR 4.9 for the submission of Confidential Business Information. Submitters should clearly mark and designate as confidential any Confidential Business Information.

§ 315.4 Eligible applicants.

(a) The following entities may apply for assistance to operate a TAAC:

(1) Universities or affiliated organizations;

(2) States or local governments; or

(3) Non-profit organizations.

(b) For purposes of § 315.17 and to the extent funds are appropriated to implement section 265 of the Trade Act, organizations assisting or representing industries in which a substantial number of Firms or workers have been certified as eligible to apply for Adjustment Assistance under sections 223 and 251 of the Trade Act, include:

(1) Existing agencies;

(2) Private individuals;

(3) Firms;

(4) Universities;

(5) Institutions;

(6) Associations;

(7) Unions; or

(8) Other non-profit industry organizations.

§ 315.5 TAAC scope, selection, evaluation and awards.

(a) *TAAC purpose and scope.* (1) TAACs are available to assist Firms in obtaining Adjustment Assistance in all 50 U.S. States, the District of Columbia and the Commonwealth of Puerto Rico. TAACs provide Adjustment Assistance in accordance with this part either through their own staffs or by arrangements with outside consultants. Information concerning TAACs serving particular areas may be obtained from the TAAC Web site at *http://www.taacenters.org* or from EDA at *http://www.eda.gov.*

(2) Prior to submitting a petition for Adjustment Assistance to EDA, a Firm should determine the extent to which a TAAC can provide the required Adjustment Assistance. EDA will provide Adjustment Assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for Adjustment Assistance will normally be made through TAACs.

(3) A TAAC generally provides Adjustment Assistance by providing assistance to a:

(i) Firm in preparing its petition for eligibility certification; and

(ii) Certified Firm in diagnosing its strengths and weaknesses, and developing and implementing an Adjustment Proposal.

(b) *TAAC selection.* (1) EDA invites currently funded TAACs to submit either new or amended applications, provided they have performed in a satisfactory manner and complied with previous or current conditions in their Cooperative Agreements with EDA and contingent upon availability of funds. Such TAACs shall submit an application on a form approved by OMB, as well as a proposed budget, narrative scope of work, and such other information as requested by EDA. Acceptance of an application or amended application for a Cooperative Agreement does not ensure funding by EDA.

(2) EDA may invite new applications through a Federal Funding Opportunity *('FFO')* announcement. An application will require a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an application does not ensure funding by EDA.

(c) *TAAC evaluation.* (1) EDA generally evaluates currently funded TAACs based on:

(i) Performance under Cooperative Agreements with EDA and compliance with the terms and conditions of such Cooperative Agreements;

(ii) Proposed scope of work, budget and application or amended application; and

(iii) Availability of funds.

(2) EDA generally evaluates new TAACs based on:

(i) Competence in administering business assistance programs;

(ii) Background and experience of staff;

(iii) Proposed scope of work, budget and application; and

(iv) Availability of funds.

(d) *TAAC award requirements.* (1) EDA generally funds a TAAC for a three-year project period consisting of three separate funding periods of 12 months each.

(2) There are no matching share requirements for Adjustment Assistance provided by the TAACs to Firms for certification or for administrative expenses of the TAACs.

§ 315.6 Firm eligibility for Adjustment Assistance.

(a) Firms participate in the Trade Adjustment Assistance for Firms program in accordance with the following:

(1) Firms apply for certification through a TAAC by completing a petition for certification. The TAAC will assist Firms in completing such petitions (at no cost to the Firms);

(2) Firms certified in accordance with the procedures described in §§ 315.7 and 315.8 must prepare an Adjustment Proposal for Adjustment Assistance from the TAAC ('Adjustment Proposal') and submit it to EDA for approval; and

(3) EDA determines whether the Adjustment Assistance requested in the Adjustment Proposal is eligible based upon the evaluation criteria set forth in subpart D of this part. A Certified Firm may submit a request to the TAAC for Adjustment Assistance to implement an approved Adjustment Proposal.

(b) For certification, EDA evaluates Firms' petitions strictly on the basis of fulfillment of the requirements set forth in § 315.7.

(c) (1) Certified Firms generally receive Adjustment Assistance over a two-year period.

(2) The matching share requirements are as follows:

(i) Each Certified Firm must pay at least 25 percent of the cost of preparing its Adjustment Proposal. Each Certified Firm requesting $30,000 or less in total Adjustment Assistance in its approved Adjustment Proposal must pay at least 25 percent of the cost of that Adjustment Assistance. Each Certified Firm requesting more than $30,000 in total Adjustment Assistance in its approved Adjustment Proposal must pay at least 50 percent of the cost of that Adjustment Assistance.

(ii) Organizations representing trade-injured industries must pay at least 50 percent of the total cash cost of the Adjustment Assistance, in addition to appropriate in-kind contributions.

Subpart B—Certification of Firms

§ 315.7 Certification requirements.

(a) *General.* EDA may certify a Firm as eligible to apply for Adjustment Assistance under section 251(c) of the Trade Act if it determines that the petition for certification meets one of the minimum certification thresholds set forth in paragraph (b) of this section. In order to be certified, a Firm must meet the criteria listed under any one of the 5 circumstances described in paragraph (b) of this section.

(b) *Minimum certification thresholds.* (1) *Twelve-month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding twelve-month period:

(i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;

(ii) Either sales or production, or both, of the Firm has Decreased Absolutely; or sales or production, or both, of any article or service that accounted for not less than 25 percent of the total production or sales of the Firm during the 12-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(2) *Twelve-month versus twenty-four month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding 24-month period:

(i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;

(ii) Either average annual sales or production, or both, of the Firm has Decreased Absolutely; or average annual sales or production, or both, of any article or service that accounted for not less than 25 percent of the total production or sales of the Firm during the 24-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(3) *Twelve-month versus thirty-six month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding 36-month period:

(i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;

(ii) Either average annual sales or production, or both, of the Firm has Decreased Absolutely; or average annual sales or production, or both, of any article or service that accounted for not less than 25 percent of the total production or sales of the Firm during the 36-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(4) *Interim sales or production decline.* Based upon an interim sales or production decline:

(i) Sales or production has Decreased Absolutely for, at minimum, the most recent six-month period during the most recent 12-month period for which data are available as compared to the same six-month period during the immediately preceding 12-month period;

(ii) During the same base and comparative period of time as sales or production has Decreased Absolutely, a Significant Number or Proportion of Workers in such Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation; and

(iii) During the same base and comparative period of time as sales or production has Decreased Absolutely, an Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(5) *Interim employment decline.* Based upon an interim employment decline:

(i) A Significant Number or Proportion of Workers in such Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation during, at a minimum, the most recent six-month period during the most recent 12-month period for which data are available as compared to the same six-month period during the immediately preceding 12-month period; and

(ii) Either sales or production of the Firm has Decreased Absolutely during the 12-month period preceding the most recent 12-month period for which data are available; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or *production or supply of services.*

§ 315.8 Processing petitions for certification.

(a) Firms shall consult with a TAAC for guidance and assistance in the preparation of their petitions for certification.

(b) A Firm seeking certification shall complete a *Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance* (Form ED–840P or any successor form) with the following information about such Firm:

(1) Identification and description of the Firm, including legal form of organization, economic history, major ownership interests, officers, directors, management, parent company, Subsidiaries or Affiliates, and production and sales facilities;

(2) Description of goods or services supplied or sold;

(3) Description of imported Directly Competitive or Like Articles or Services with those produced or supplied;

(4) Data on its sales, production and employment for the applicable 24-month, 36-month, or 48-month period, as required under § 315.7(b);

(5) One copy of a complete auditor's certified financial report for the entire period covering the petition, or if not available, one copy of the complete profit and loss statements, balance sheets and supporting statements prepared by the Firm's accountants for the entire period covered by the petition; publicly-owned corporations should submit copies of the most recent Form 10–K annual reports (or Form 10–Q quarterly reports, as appropriate) filed with the U.S. Securities and Exchange Commission for the entire period covered by the petition;

(6) Information concerning its major customers and their purchases (or its bids, if there are no major customers); and

(7) Such other information as EDA considers material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Promptly thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the TAAC that the petition has not been accepted, but may be resubmitted at any time without prejudice when the specified deficiencies have been corrected. Any resubmission will be treated as a new petition.

(d) EDA will publish a notice of acceptance of a petition in the **Federal Register.**

(e) EDA will initiate an investigation to determine whether the petitioner meets the requirements set forth in section 251(c) of the Trade Act and § 315.7.

(f) A petitioner may withdraw a petition for certification if EDA receives a request for withdrawal before it makes a certification determination or denial. A Firm may submit a new petition at any time thereafter in accordance with the requirements of this section and § 315.7.

(g) Following acceptance of a petition, EDA will:

(1) Make a determination based on the Record as soon as possible after the petitioning Firm or TAAC has submitted all material. In no event may the determination period exceed 40 days from the date on which EDA accepted the petition; and

(2) Either certify the petitioner as eligible to apply for Adjustment Assistance or deny the petition. In either event, EDA shall promptly give written notice of action to the petitioner. Any written notice to the petitioner of a denial of a petition shall specify the reason(s) for the denial. A petitioner shall not be entitled to resubmit a petition within one year from the date of denial, provided, EDA may waive the one-year limitation for good cause.

§ 315.9 Hearings.

EDA will hold a public hearing on an accepted petition if the petitioner or any interested Person found by EDA to have a Substantial Interest in the proceedings submits a request for a hearing no later than 10 days after the date of publication of the notice of acceptance in the **Federal Register,** under the following procedures:

(a) The petitioner or any interested Person(s) shall have an opportunity to be present, to produce evidence and to be heard;

(b) A request for public hearing must be delivered by hand or by registered mail to EDA. A request by a Person other than the petitioner shall contain:

(1) The name, address and telephone number of the Person requesting the hearing; and

(2) A complete statement of the relationship of the Person requesting the hearing to the petitioner and the subject matter of the petition, and a statement of the nature of its interest in the proceedings.

(c) If EDA determines that the requesting party does not have a Substantial Interest in the proceedings, a written notice of denial shall be sent to the requesting party. The notice shall specify the reasons for the denial;

(d) EDA shall publish a notice of a public hearing in the **Federal Register,** containing the subject matter, name of petitioner, and date, time and place of the hearing; and

(e) EDA shall appoint a presiding officer for the hearing who shall respond to all procedural questions.

§ 315.10 Loss of certification benefits.

EDA may terminate a Firm's certification or refuse to extend Adjustment Assistance to a Firm for any of the following reasons:

(a) Failure to submit an acceptable Adjustment Proposal within two years after date of certification. While approval of an Adjustment Proposal may occur after the expiration of such two-year period, a Firm must submit an acceptable Adjustment Proposal before such expiration;

(b) Failure to submit documentation necessary to start implementation or modify its request for Adjustment Assistance consistent with its

Adjustment Proposal within six months after approval of the Adjustment Proposal, where two years have elapsed since the date of certification. If the Firm anticipates needing a longer period to submit documentation, it should indicate the longer period in its Adjustment Proposal. If the Firm is unable to submit its documentation within the allowed time, it should notify EDA in writing of the reasons for the delay and submit a new schedule. EDA has the discretion to accept or refuse a new schedule;

(c) EDA has denied the Firm's request for Adjustment Assistance, the time period allowed for the submission of any documentation in support of such request has expired, and two years have elapsed since the date of certification; or

(d) Failure to diligently pursue an approved Adjustment Proposal where five years have elapsed since the date of certification.

§ 315.11 Appeals, final determinations and termination of certification.

(a) Any petitioner may appeal in writing to EDA from a denial of certification, provided that EDA receives the appeal by personal delivery or by registered mail within 60 days from the date of notice of denial under § 315.8(g). The appeal must state the grounds on which the appeal is based, including a concise statement of the supporting facts and applicable law. The decision of EDA on the appeal shall be the final determination within the Department. In the absence of an appeal by the petitioner under this paragraph, the determination under § 315.8(g) shall be final.

(b) A Firm, its representative or any other interested domestic party aggrieved by a final determination under paragraph (a) of this section may, within 60 days after notice of such determination, begin a civil action in the United States Court of International Trade for review of such determination, in accordance with section 284 of the Trade Act.

(c) Whenever EDA determines that a Certified Firm no longer requires Adjustment Assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the **Federal Register.** The termination will take effect on the date specified in the published notice.

(d) EDA shall immediately notify the petitioner and shall state the reasons for any termination.

Subpart C—Protective Provisions

§ 315.12 Recordkeeping.

Each TAAC shall keep records that fully disclose the amount and disposition of Trade Adjustment Assistance for Firms program funds so as to facilitate an effective audit.

§ 315.13 Audit and examination.

EDA and the Comptroller General of the United States shall have access for the purpose of audit and examination to any books, documents, papers, and records of a Firm, TAAC or other recipient of Adjustment Assistance pertaining to the award of Adjustment Assistance.

§ 315.14 Certifications.

EDA will provide no Adjustment Assistance to any Firm unless the owners, partners, members, directors or officers thereof certify to EDA:

(a) The names of any attorneys, agents, and other Persons engaged by or on behalf of the Firm for the purpose of expediting applications for such Adjustment Assistance; and

(b) The fees paid or to be paid to any such Person.

§ 315.15 Conflicts of interest.

EDA will provide no Adjustment Assistance to any Firm under this part unless the owners, partners, or officers execute an agreement binding them and the Firm for a period of two years after such Adjustment Assistance is provided, to refrain from employing, tendering any office or employment to, or retaining for professional services any Person who, on the date such assistance or any part thereof was provided, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which involved discretion with respect to the provision of such Adjustment Assistance.

Subpart D—Adjustment Proposals

§ 315.16 Adjustment proposal requirements.

EDA evaluates Adjustment Proposals based on the following:

(a) EDA must receive the Adjustment Proposal within two years after the date of the certification of the Firm;

(b) The Adjustment Proposal must include a description of any Adjustment Assistance requested to implement such proposal, including financial and other supporting documentation as EDA determines is necessary, based upon either:

(1) An analysis of the Firm's problems, strengths and weaknesses and an assessment of its prospects for recovery; or

(2) If EDA so determines, other available information;

(c) The Adjustment Proposal must:

(1) Be reasonably calculated to contribute materially to the economic adjustment of the Firm (*i.e.,* that such proposal will constructively assist the Firm to establish a competitive position in the same or a different industry);

(2) Give adequate consideration to the interests of a sufficient number of separated workers of the Firm, by providing, for example, that the Firm will:

(i) Give a rehiring preference to such workers;

(ii) Make efforts to find new work for a number of such workers; and

(iii) Assist such workers in obtaining benefits under available programs; and

(3) Demonstrate that the Firm will make all reasonable efforts to use its own resources for its recovery, though under certain circumstances, resources of related Firms or major stockholders will also be considered; and

(d) The Adjustment Assistance identified in the Adjustment Proposal must consist of specialized consulting services designed to assist the Firm in becoming more competitive in the global marketplace. For this purpose, Adjustment Assistance generally consists of knowledge-based services such as market penetration studies, customized business improvements, and designs for new products. Adjustment Assistance does not include expenditures for capital improvements or for the purchase of business machinery or supplies.

Subpart E—Assistance to Industries

§ 315.17 Assistance to firms in import-impacted industries.

(a) Whenever the International Trade Commission makes an affirmative finding under section 202(B) of the Trade Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA shall provide to the Firms in such industry assistance in the preparation and processing of petitions and applications for benefits under programs which may facilitate the orderly adjustment to import competition of such Firms.

(b) EDA may provide Adjustment Assistance, on such terms and conditions as EDA deems appropriate, for the establishment of industry-wide programs for new product development, new process development, export development or other uses consistent with the purposes of the Trade Act and this part.

(c) Expenditures for Adjustment Assistance under this section may be up to $10,000,000 annually per industry, subject to availability of funds, and shall be made under such terms and conditions as EDA deems appropriate.

Dated: August 13, 2009.

Dennis Alvord,

Acting Deputy Assistant Secretary of Commerce for Economic Development.

[FR Doc. E9–19774 Filed 8–17–09; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0447; Directorate Identifier 2008–NM–172–AD; Amendment 39–15993; AD 2009–17–02]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During refueling, the ground crew detected smoke from the refuel/defuel panel illuminated placard 160VU. * * *

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective September 22, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 22, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 14, 2009 (74 FR 22712). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During refueling, the ground crew detected smoke from the refuel/defuel panel illuminated placard 160VU. The design of the refuel/defuel panel illuminated placard was changed during 1997 from its original specification, to fill the cavity inside the placard with silicone to avoid moisture/fluid ingress. SAAB has reviewed the working procedure and has developed a placard filled with a bi-component silicone-based material to minimize the cavity inside the panels.

For the reasons described above, this EASA AD requires the identification of the manufacturing date of the affected placard, a visual inspection of the placard for heat and/or burn marks and the installation of a new placard in accordance with the instructions of SAAB Service Bulletin (SB) 340–28–027.

This AD has been revised to identify the affected VIBRACHOC (the part manufacturer) placard with Part Number (P/N) C4FL5031C001, instead of the corresponding SAAB P/N 9303719–001, which was (also) quoted inaccurately. In addition, it has been recognised that the original AD did not allow installation of the placards with a manufacturing date before 31/97; that has now been corrected.

The unsafe condition is an electrical malfunction in the illuminated placard of the refuel and defuel panel, which could result in fire. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between this AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a note within the AD.

Costs of Compliance

We estimate that this AD will affect 141 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $1,500 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $234,060, or $1,660 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2009–17–02 Saab AB, Saab Aerosystems: Amendment 39–15993. Docket No. FAA–2009–0447; Directorate Identifier 2008–NM–172–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 22, 2009.

Affected ADs

(b) None.

Applicability

(c) Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B airplanes; certificated in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During refueling, the ground crew detected smoke from the refuel/defuel panel illuminated placard 160VU. The design of the refuel/defuel panel illuminated placard was changed during 1997 from its original specification, to fill the cavity inside the placard with silicone to avoid moisture/fluid ingress. SAAB has reviewed the working procedure and has developed a placard filled with a bi-component silicone-based material to minimize the cavity inside the panels.

For the reasons described above, this EASA AD requires the identification of the manufacturing date of the affected placard, a visual inspection of the placard for heat and/or burn marks and the installation of a new placard in accordance with the instructions of SAAB Service Bulletin (SB) 340–28–027.

This AD has been revised to identify the affected VIBRACHOC (the part manufacturer) placard with Part Number (P/N) C4FL5031C001, instead of the corresponding SAAB P/N 9303719–001, which was (also) quoted inaccurately. In addition, it has been recognized that the original AD did not allow installation of the placards with a manufacturing date before 31/97; that has now been corrected.

The unsafe condition is an electrical malfunction in the illuminated placard of the refuel and defuel panel, which could result in fire.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within 3 months after the effective date of this AD, inspect the illuminated placard of the refuel and defuel panel, part number (P/N) C4FL5031C001, for signs of heat and burn marks, in accordance with Saab Service Bulletin 340–28–027, Revision 01, dated July 7, 2008.

(2) If any sign of heat or burn marks are found, before further flight, replace the illuminated placard of the refuel and defuel panel with a new illuminated placard of the refuel and defuel panel, having part number C4FL5031C001, and marked with a manufacturer date before 31/97 (*i.e.,* week 31 of 1997), or a manufacturing date of 37/07 (*i.e.,* week 37 of 2007) or higher and marked 'Amdt:A.', in accordance with Saab Service Bulletin 340–28–027, Revision 01, dated July 7, 2008.

(3) If no signs of heat and burn marks are found, within 12 months after accomplishing the inspection required by (f)(1) of this AD is done, replace the illuminated placard of the fuel and defuel panel with a new illuminated placard of the refuel and defuel panel, having part number C4FL5031C001, and marked with a manufacturer date before 31/97 (*i.e.,* week 31 of 1997) or a manufacturing date of 37/07 (*i.e.,* week 37 of 2007) or higher and marked 'Amdt:A.', in accordance with Saab Service Bulletin 340–28–027, Revision 01, dated July 7, 2008.

(4) As of 15 months after the effective date of this AD, installing an illuminated placard of the refuel and defuel panel is prohibited on any airplane, unless it has a manufacturing date before 31/97, or unless it has a manufacturing date of 37/07 or higher and is marked 'Amdt:A'.

(5) Actions accomplished before the effective date of this AD in accordance with Saab Service Bulletin 340–28–027, dated April 30, 2008, are considered acceptable for compliance with the corresponding actions specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to Attn: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0127R1, dated August 7, 2008; and Saab Service Bulletin 340–28–027, Revision 01, dated July 7, 2008, for related information.

Material Incorporated by Reference

(i) You must use Saab Service Bulletin 340–28–027, Revision 01, dated July 7, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Saab Aircraft AB, SAAB Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; e-mail *saab2000.techsupport@saabgroup.com*; Internet *http://www.saabgroup.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 3, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19182 Filed 8–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0532; Directorate Identifier 2008–NM–024–AD; Amendment 39–15994; AD 2009–17–03]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The airbrake upper crossbeam on an airplane failed in-flight. The crossbeam failure caused damage to the rudder control system, resulting in loss of rudder control. Loss of rudder control will cause handling difficulties particularly during take-off, approach, and landing phases in cross winds.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective September 22, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 22, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 11, 2009 (74 FR 27725). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The airbrake upper crossbeam on an airplane failed in-flight. The crossbeam failure caused damage to the rudder control system, resulting in loss of rudder control. Loss of rudder control will cause handling difficulties particularly during take-off, approach, and landing phases in cross winds.

BAE Systems (Operations) Ltd has published Inspection Service Bulletin (ISB) 53–200 that revises and supersedes the inspection requirements, which are defined in the Maintenance Review Board Report (MRBR) SSI Task 53–40–125, Supplemental Structural Inspections Document (SSID) Tasks 53–40–125.1 and 53–40–125.2 (included in the Airworthiness Limitations Section of Aircraft Maintenance Manual Chapter 5 that is currently mandated as part of EASA AD 2007–0271 [which corresponds to an FAA NPRM, Directorate Identifier 2007–NM–363–AD]) and in Maintenance Planning Document (MPD) Task Reference 534025–DVI–10000–1. These revised inspection requirements and reduced inspection periods are to ensure that any fatigue damage is detected before it causes upper airbrake crossbeam failure. MRBR, SSID and MPD will be amended in due course to reflect these revised inspection periods.

For the reasons stated above, this Airworthiness Directive (AD) requires the [high frequency eddy current and low frequency phase analysis eddy current] inspection [for cracking, discrete surface damage, and discontinuity (corrosion and mechanical damage)] and, as necessary, repair of the airbrake upper crossbeam.

The required actions include replacing the three rivets with Hi-lok pins. For cracking, damage, or discontinuity that is outside certain limits defined in the service bulletin, the repair includes contacting BAE Systems (Operations) Limited for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a note within the AD.

Costs of Compliance

We estimate that this AD affects 1 product of U.S. registry. We also estimate that it takes about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $480 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2009–17–03 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–15994. Docket No. FAA–2009–0532; Directorate Identifier 2008–NM–024–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 22, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The airbrake upper crossbeam on an airplane failed in-flight. The crossbeam failure caused damage to the rudder control system, resulting in loss of rudder control. Loss of rudder control will cause handling difficulties particularly during take-off, approach, and landing phases in cross winds.

BAE Systems (Operations) Ltd has published Inspection Service Bulletin (ISB) 53–200 that revises and supersedes the inspection requirements, which are defined in the Maintenance Review Board Report (MRBR) SSI Task 53–40–125, Supplemental Structural Inspections Document (SSID) Tasks 53–40–125.1 and 53–40–125.2 (included in the Airworthiness Limitations Section of Aircraft Maintenance Manual Chapter 5 that is currently mandated as part of EASA AD 2007–0271 [which corresponds to an FAA NPRM, Directorate Identifier 2007–NM–363–AD]) and in Maintenance Planning Document (MPD) Task Reference 534025–DVI–10000–1. These revised inspection requirements and reduced inspection periods are to ensure that any fatigue damage is detected before it causes upper airbrake crossbeam failure. MRBR, SSID and MPD will be amended in due course to reflect these revised inspection periods.

For the reasons stated above, this Airworthiness Directive (AD) requires the [high frequency eddy current and a low frequency phase analysis eddy current] inspection [for cracking, discrete surface damage, and discontinuity (corrosion and mechanical damage)] and, as necessary, repair of the airbrake upper crossbeam.

The required actions include replacing the three rivets with Hi-lok pins. For cracking, damage, or discontinuity that is outside certain limits defined in the service bulletin, the repair includes contacting BAE Systems (Operations) Limited for repair instructions and doing the repair.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) At the applicable time specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, inspect for cracking, damage, and discontinuity of the airbrake upper crossbeam fastener positions and lightening holes; and replace the three rivets with Hi-lok pins; in accordance with paragraphs 2.B., 2.C., and 2.D. of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–200, Revision 1, dated March 13, 2007. If any crack, damage, or discontinuity is found: Before further flight, repair as required by paragraph (f)(3) of this AD.

(i) For airplanes that have not been inspected in accordance with BAE Systems (Operations) Limited MRBR SSI Task No. 53–40–125 (MPD Reference 534025–DVI–10000–1) as of the effective date of this AD, do the inspection prior to accumulating 20,000 total flight cycles or 500 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For airplanes subject to MRBR and SSID requirements that have been inspected in accordance with BAE Systems (Operations) Limited MRBR SSI Task No. 53–40–125 (MPD Reference 534025–DVI–10000–1) as of the effective date of this AD, do the inspection at the latest of the times in paragraphs (f)(1)(ii)(A), (f)(1)(ii)(B), or (f)(1)(ii)(C) of this AD.

(A) Before the accumulation of 4,000 flight cycles since last inspection.

(B) Within 2,500 flight cycles (for MRBR airplanes), or within 1,000 flight cycles (for SSID airplanes) after the effective date of this AD; but not exceeding 8,000 flight cycles since the last inspection.

(C) Within 500 flight cycles after the effective date of this AD.

(2) Repeat the inspection required by paragraph (f)(1) of this AD thereafter at the applicable time specified in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this AD. If any crack, damage, or discontinuity is found: Before further flight, repair as required by paragraph (f)(3) of this AD.

(i) Inspect fastener positions at the rivet locations at intervals not to exceed 4,000 flight cycles.

(ii) Inspect the holes at Hi-lok pin locations at intervals not to exceed 12,000 flight cycles.

(iii) Inspect the lightening holes at intervals not to exceed 12,000 flight cycles.

(3) If any crack, damage, or discontinuity is found during any inspection required by this AD: Before further flight, do the repair in accordance with paragraph 2.E. of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–200, Revision 1, dated March 13, 2007.

(4) Actions accomplished before the effective date of this AD in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–200, dated December 21, 2006, are considered acceptable for compliance with the corresponding action specified in this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to Attn: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2007–0307, dated December 17, 2007; and BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–200, Revision 1, dated March 13, 2007; for related information.

Material Incorporated by Reference

(i) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–200, Revision 1, dated March 13, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact BAE Systems Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail raebusiness@baesystems.com; Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 4, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19442 Filed 8–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1143; Directorate Identifier 2008–NM–136–AD; Amendment 39–15990; AD 2009–16–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. That AD currently requires replacing brackets that hold the P5 panel to the airplane structure, the standby compass bracket assembly, the generator drive and standby power module, and the air conditioning module, as applicable. The existing AD also currently requires, among other actions, inspecting for wire length and for damage of the connectors and the wire bundles, and doing applicable corrective actions if necessary. This new AD requires an additional operational test of the P5–14 panel. This AD results from a report of an electrical burning smell in the flight compartment. We are issuing this AD to prevent wire bundles from contacting the overhead dripshield panel and modules in the P5 overhead panel, which could result in electrical arcing and shorting of the electrical connector and consequent loss of several critical systems essential for safe flight; and to ensure proper operation of the passenger oxygen system. If an improperly functioning passenger oxygen system goes undetected, the passenger oxygen mask could fail to deploy and result in possible incapacitation of passengers during a depressurization event.

DATES: This AD becomes effective September 22, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 22, 2009.

On June 22, 2006 (71 FR 28766, May 18, 2006), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Binh Tran, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–10–17, amendment 39–14601 (71 FR 28766, May 18, 2006). The existing AD applies to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. That NPRM was published in the **Federal Register** on October 31, 2008 (73 FR 64894). That NPRM proposed to continue to require replacing brackets that hold the P5 panel to the airplane structure, the standby compass bracket assembly, the generator drive and

standby power module, and the air conditioning module. That NPRM also proposed to continue to require, among other actions, inspecting for wire length and for damage of the connectors and the wire bundles and doing applicable corrective actions if necessary. That NPRM also proposed to require an additional operational test of the P5–14 panel.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Request To Align AD Action With Related Service Bulletin

One commenter, Boeing, requests that the NPRM wording for paragraph (f)(4) be revised to align with Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008. Boeing states that the current wording in the NPRM indicates that the standby compass bracket assembly must be replaced with a new assembly. Boeing states that Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008, states that the standby compass bracket assembly need not be replaced for all groups of airplanes. Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008, also states to replace the standby compass bracket if necessary.

We agree that clarification may be necessary. Paragraph (f)(4) is a restatement of actions required by AD 2006–10–17, and is retained in this supersedure. Paragraph (f) of this AD states that the corrective actions (including replacing the standby compass bracket assembly as required by paragraph (f)(4) of this AD) must be done, as applicable. In addition, we note that a new requirement of this AD, paragraph (i) of this AD, requires that after the effective date of this AD, only Revision 3 of Boeing Service Bulletin 737–24A1141, dated February 20, 2008, be used to do all applicable actions. We have not made any changes to the AD in this regard.

Request To Clarify Terminology

One commenter, the Air Transport Association (ATA), on behalf of its member Delta Airlines, requests that the terminology in Boeing Service Bulletin 737–24A1141 be clarified. In its comment, Delta states that it believes that Boeing Service Bulletin 737–24A1141 contains material that is vague in nature, which would leave information subject to interpretation.

Delta states that Boeing Service Bulletin 737–24A1141 includes figures that contain statements such as, ''Some airplanes may have different wires, panels or connectors'' (e.g., in Figures 6–11 and 94 of the service bulletin). Delta is concerned that statements such as these, when dealing with compliance situations in which many different individuals are left to determine the intent and method prescribed by such instructions, can lead to problems determining the state of compliance of aircraft that have had work accomplished per the required accomplishment instructions. In the past, this has led to the grounding of airplanes at significant expense to the airlines, while confusion over the interpretation of said instructions is determined and resolved. Therefore, Delta believes that either Boeing Service Bulletin 737–24A1141 should be revised to clarify the meaning of vague terms (e.g., ''typical''), or the AD should include notes to accomplish the same intent.

Delta states that failure to clarify the vague terms will likely lead to the same compliance issues that operators previously experienced with the B737 Rudder System Enhancement Program (AD 2007–03–07, Amendment 39–14918, 72 FR 4625, February 1, 2007) and MD88 auxiliary hydraulic pump feeder wire inspection/modification (AD 2006–15–15, Amendment 39–14696, 71 FR 43035, July 31, 2006).

We find that clarification of certain material contained in Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008, is necessary. We discussed the material referenced by the commenter as ''vague'' with Boeing to clarify the intended meaning.

Boeing noted that Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008, was initially released in January 2004, and since then has been revised three times (December 2004, December 2005, and February 2008) to update and correct information. As specified in Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008, required actions include: replacing brackets to lower the P5 overhead panel to increase the space between the wire bundles and the dripshield panel and modules; inspecting to determine if unwanted wire length or damage exists; retying the wire bundle or reterminating the wire bundle into the connector to eliminate the unwanted wire; and repairing damaged wire and using teflon tape, nylon sheet, and lacing tape to give greater protection to the wire bundles. Also, depending on airplane configuration, the service bulletin specifies replacing the standby compass bracket assembly with a new assembly, and replacing the stud assemblies with new assemblies.

Boeing clarified that the P5 overhead panel varies from customer to customer, as indicated in the 98 figures contained in Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008. Boeing explains that the phrase questioned by the commenter—i.e., ''Some airplanes may have different wires, panels or connectors''—was used in the illustrations in the figures to indicate that the configuration on any given customer's airplane may be different from that shown in the illustrations. The illustrations simply provide examples of various configurations an operator might find; therefore, the information provided in the illustrations of the figures is for reference. Boeing explained further that the word ''typical'' is intended to represent a configuration that is in more than one location within an illustration. Additionally, while accomplishment of the steps specified in the tables of the figures is required, the illustrations are simply examples of the wiring configuration.

In addition, we find that the word ''unwanted'' requires clarification. That term is used in various locations in the service bulletin in conjunction with wire length conditions—e.g., paragraph 3.B.9. of the Accomplishment Instructions states to ''Inspect the connectors and the wire bundles in the rear, P5 aft panel to determine if unwanted wire length exists in Group 1–22 airplanes. *See* Figure 6.'' We clarify that the General Information section of the Accomplishment Instructions of Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008, references Boeing Standard Wiring Practices Manual (SWPM) 20–10–11 for wire installation procedures, including defining the amount of slack and making sure that all wire slack is securely tied into the parent harness or clamped. Additionally, it should be noted that tables found in certain figures of Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008 (Figure 6, for example), refer operators to the SWPM for general conditions for wire installation.

We have revised this final rule to include new Note 2 and Note 3 to clarify the meaning of the terminology discussed previously.

Updated Contact Information for Alternative Methods of Compliance (AMOCs)

We have updated the contact information for paragraph (k) of this final rule.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 740 airplanes of the affected design in the worldwide fleet. This AD affects about 333 airplanes of U.S. registry.

For all airplanes, the required inspection, replacements, and wiring change that are required by AD 2006–10–17 and retained in this AD take about 16 or 18 work hours per airplane (depending on airplane configuration), at an average labor rate of $80 per work hour. Required parts cost about $10,231 or $11,139 per airplane (depending on the kit). Based on these figures, the estimated cost of the replacements and inspections required by this AD for U.S. operators is between $3,833,163 and $4,188,807, or between $11,511 and $12,579 per airplane.

For certain airplanes, the modification of the generator drive and standby power module assembly that is required by AD 2006–10–17 and retained in this AD takes about 2 work hours per airplane, at an average labor rate of $80 per work hour. The airplane manufacturer states that it will supply required parts to operators at no cost. Based on these figures, the estimated cost of this modification required by this AD is $160 per airplane.

For certain other airplanes, the modification of the air conditioning module assembly that is required by AD 2006–10–17 and retained in this AD takes about 1 work hour per airplane, at an average labor rate of $80 per work hour. The airplane manufacturer states that it will supply required parts to operators at no cost. Based on these figures, the estimated cost of this modification required by this AD is $80 per airplane.

For certain airplanes, the new action takes about 21 or 23 work hours per airplane depending on the airplane configuration, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the new actions required by this AD for U.S. operators is $1,680 or $1,840 per airplane, depending on the airplane configuration.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14601 (71 FR 28766, May 18, 2006) and by adding the following new airworthiness directive (AD):

2009–16–07 Boeing: Amendment 39–15990. Docket No. FAA–2008–1143; Directorate Identifier 2008–NM–136–AD.

Effective Date

(a) This AD becomes effective September 22, 2009.

Affected ADs

(b) This AD supersedes AD 2006–10–17.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008.

Unsafe Condition

(d) This AD results from a report of an electrical burning smell in the flight compartment. We are issuing this AD to prevent wire bundles from contacting the overhead dripshield panel and modules in the P5 overhead panel, which could result in electrical arcing and shorting of the electrical connector and consequent loss of several critical systems essential for safe flight; and to ensure proper operation of the passenger oxygen system. If an improperly functioning passenger oxygen system goes undetected, the passenger oxygen mask could fail to deploy and result in possible incapacitation of passengers during a depressurization event.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Requirements of AD 2006–10–17

Inspection/Replacements/Wiring Changes/ Corrective Actions

(f) Within 36 months after June 22, 2006 (the effective date of AD 2006–10–17), do the applicable actions in paragraphs (f)(1) through (f)(5) of this AD by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 737–24A1141, Revision 2, dated December 1, 2005, except as provided by paragraph (i) of this AD. Any applicable corrective actions must be done before further flight.

(1) Replace the five brackets that hold the P5 panel to the airplane structure with new brackets;

(2) Do a general visual inspection for wire length and damage of the connectors and the wire bundles, and applicable corrective actions;

(3) Make wiring changes;

(4) Replace the standby compass bracket assembly with a new assembly; and

(5) Replace the stud assemblies with new assemblies.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(g) Actions done before June 22, 2006, in accordance with Boeing Alert Service Bulletin 737–24A1141, Revision 1, dated December 23, 2004, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Concurrent Requirements

(h) Before or concurrently with the requirements of paragraph (f) of this AD, do the applicable action specified in Table 1 of this AD.

TABLE 1—CONCURRENT REQUIREMENTS

For airplanes identified in Boeing component Service Bulletin—	Action
(1) 233A3205–24–01, dated July 26, 2001	Modify the generator drive and standby power module assembly in accordance with the Accomplishment Instructions of Boeing Component Service Bulletin 233A3205–24–01, dated July 26, 2001.
(2) 69–37319–21–02, Revision 1, dated August 30, 2001.	Modify the air conditioning module assembly in accordance with the Accomplishment Instructions of Boeing Component Service Bulletin 69-37319–21–02, Revision 1, dated August 30, 2001.

New Actions Required by This AD

New Service Bulletin Revision

(i) As of the effective date of this AD, use only the Accomplishment Instructions of Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008, to do all the applicable actions required by paragraph (f) of this AD.

Note 2: Accomplishment of the steps specified in the tables of the figures of Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008, is required. Due to the variability of airplane configurations, the illustrations in the figures are provided as examples.

Note 3: Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008, refers to ''unwanted'' wire length. ''Unwanted'' wire length is any wire length that does not meet the wire length requirements specified in the Standard Wiring Practices Manual (SWPM).

Additional Operational Test

(j) For airplanes on which the actions required by paragraph (f) of this AD have been done in accordance with Boeing Service Bulletin 737–24A1141, Revision 2, dated December 1, 2005, before the effective date of this AD: Within 12 months after the effective date of this AD, do an operational test of the P5–14 panel in accordance with paragraphs 3.B.92. and 3.B.93., as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to Attn: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6485; fax (425) 917–6590. Or, e-mail information to *9–ANM–Seattle-ACO–AMOC–Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) AMOCs approved previously in accordance with AD 2006–10–17 are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(l) You must use the service information contained in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 2—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Revision level	Date
Boeing Component Service Bulletin 233A3205–24–01	Original	July 26, 2001.
Boeing Component Service Bulletin 69–37319–21–02	1	August 30, 2001.
Boeing Service Bulletin 737–24A1141	3	February 20, 2008.

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in Table 3 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 3—NEW MATERIAL INCORPORATED BY REFERENCE

Document	Revision level	Date
Boeing Service Bulletin 737–24A1141	3	February 20, 2008.

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information contained in Table 4 of this AD on June 22, 2006 (71 FR 28766, May 18, 2006).

TABLE 4—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Document	Revision level	Date
Boeing Component Service Bulletin 233A3205–24–01	Original	July 26, 2001.
Boeing Component Service Bulletin 69–37319–21–02	1	August 30, 2001.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 7, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19180 Filed 8–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0004; Directorate Identifier 2008–NM–160–AD; Amendment 39–15995; AD 2009–17–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

One case of elevator servo-control disconnection has been experienced on an aircraft of the A320 family. Failure occurred at the servo-control rod eye-end. Further to this finding, additional inspections have revealed cracking at the same location on a number of other servo-control rod eye-ends. In one case, both actuators of the same elevator surface were affected. * * *

A dual servo-control disconnection on the same elevator could result in an uncontrolled surface, the elevator surface being neither actuated nor damped, which could lead to reduced control of the aircraft.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective September 22, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 22, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 13, 2009 (74 FR 1646). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

One case of elevator servo-control disconnection has been experienced on an aircraft of the A320 family. Failure occurred at the servo-control rod eye-end. Further to this finding, additional inspections have revealed cracking at the same location on a number of other servo-control rod eye-ends. In one case, both actuators of the same elevator surface were affected. The root cause of the cracking has not yet been determined and tests are ongoing. It is anticipated that further actions will be required.

A dual servo-control disconnection on the same elevator could result in an uncontrolled surface, the elevator surface being neither actuated nor damped, which could lead to reduced control of the aircraft.

For the reason described above, this AD requires a one-time inspection [for cracking] of the elevator servo-control rod eye-ends and, in case of findings, the accomplishment of corrective actions.

The corrective actions include replacing any cracked rod eye-end with a serviceable unit and re-adjusting the elevator servo-control. You may obtain further information by examining the MCAI in the AD docket.

Explanation of Revised Service Information

Airbus has issued All Operators Telex (AOT) A320–27A1186, Revision 04, dated April 3, 2009. (We referred to Airbus AOT A320–27A1186, dated June 23, 2008, in the NPRM as the appropriate source of service information for doing the proposed actions.) Airbus has also issued AOT A320–27A1186, Revision 01, dated August 11, 2008; Revision 02, dated March 30, 2009; and Revision 03, dated April 1, 2009. Airbus issued Revision 01, Revision 03, and Revision 04 of the AOT to include minor improvements in the procedures. No additional work is necessary for airplanes on which Airbus AOT A320–27A1186, dated June 23, 2008; Revision 01, dated August 11, 2008; Revision 02, dated March 30, 2009; or Revision 03, dated April 1, 2009; has been accomplished before the effective date of this AD. We have revised paragraphs (f)(1) through (f)(5), and paragraph (h) of this AD, to include Airbus AOT A320–27A1186, Revision 04, dated April 3, 2009. We have also added a new paragraph (f)(6) to this AD to include credit for accomplishing the actions before the effective date of this AD using the previously issued AOTs.

Airbus AOT A320–27A1186, Revision 02, dated March 30, 2009, reduces the

minimum threshold for inspections from 10,000 to 2,500 flight cycles, based on in service findings. Due to the criticality of the unsafe condition, we have determined that this AD must be issued without further delay; however, after this AD is published we might consider additional rulemaking to address the reduced compliance time.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Revise Work Instructions

Northwest Airlines (NWA) asks that we require Airbus to rewrite the work instructions specified in Airbus AOT A320–27A1186, dated June 23, 2008. NWA states that the work steps are not written in a manner that is easily transferable to work cards, such as would normally be provided with a service bulletin. NWA adds that most of the work steps are provided in multiple references that must be extracted and properly sequenced so that the intent of the AOT can be accomplished.

We acknowledge NWA's concern. We note that Airbus has issued revisions to AOT A320–27A1186 as described above under ''Explanation of Revised Service Information.'' However, we disagree that Airbus should revise AOT A320–27A1186 again because we have determined that actions done in accordance with Airbus AOT A320–27A1186, dated June 23, 2008; Revision 01, dated August 11, 2008; Revision 02, dated March 30, 2009; and Revision 03, dated April 1, 2009; or Revision 04, dated April 3, 2009; are adequate to address the identified unsafe condition. Therefore, we have made no change to the AD in this regard.

Request To Remove Reporting Requirement

NWA also asks that the reporting requirement not be included. NWA states that it sees the value in reporting confirmed findings, but if there are no findings the reporting requirement offers no improvement in safety.

We disagree with NWA. We have determined that reporting both positive and negative inspection findings will enable the manufacturer to obtain better insight into the prevalence of the cracking. Reporting all findings will allow the manufacturer to conduct statistical analyses on a continuous basis rather than waiting for the compliance time to expire, which may be several years for certain airplanes. Access to all findings will help the manufacturer to develop final action to address the identified unsafe condition in an expeditious manner. We have made no change to the AD in this regard.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a note within the AD.

Costs of Compliance

We estimate that this AD will affect 730 products of U.S. registry. We also estimate that it will take about 13 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $759,200, or $1,040 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2009–17–04 Airbus: Amendment 39–15995. Docket No. FAA–2009–0004; Directorate Identifier 2008–NM–160–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 22, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111, –112, –121, and –122; A319–111, –112, –113, –114, –115, –131, –132, and –133; A320–111, –211, –212, –214, –231, –232, –233; and A321–111, –112, –131, –211, –212, –213, –231, and –232 series airplanes; certificated in any category; all manufacturer serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

One case of elevator servo-control disconnection has been experienced on an aircraft of the A320 family. Failure occurred at the servo-control rod eye-end. Further to this finding, additional inspections have revealed cracking at the same location on a number of other servo-control rod eye-ends. In one case, both actuators of the same elevator surface were affected. The root cause of the cracking has not yet been determined and tests are ongoing. It is anticipated that further actions will be required.

A dual servo-control disconnection on the same elevator could result in an uncontrolled surface, the elevator surface being neither actuated nor damped, which could lead to reduced control of the aircraft.

For the reason described above, this AD requires a one-time inspection [for cracking] of the elevator servo-control rod eye-ends and, in case of findings, the accomplishment of corrective actions.

The corrective actions include replacing any cracked rod eye-end with a serviceable unit and re-adjusting the elevator servo-control.

Actions and Compliance

(f) Unless already done, after the accumulation of 10,000 total flight cycles since first flight of the airplane, do the following actions.

(1) Not before the accumulation of 10,000 total flight cycles since first flight of the airplane, and at the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD: Inspect both the left-hand and right-hand inboard elevator servo-control rod eye-ends for cracking, in accordance with the instructions of Airbus All Operators Telex (AOT) A320–27A1186, Revision 04, dated April 3, 2009.

(i) Within 1,500 flight cycles or 200 days after the effective date of this AD, whichever occurs first.

(ii) Within 1,500 flight cycles or 200 days after accumulating 10,000 total flight cycles since first flight of the airplane, whichever occurs first.

(2) Not before the accumulation of 10,000 total flight cycles since first flight of the airplane, and at the later of the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD: Inspect both the left-hand and right-hand outboard elevator servo-control rod eye-ends for cracking, in accordance with the instructions of Airbus AOT A320–27A1186, Revision 04, dated April 3, 2009.

(i) Within 3,000 flight cycles or 400 days after the effective date of this AD, whichever occurs first.

(ii) Within 3,000 flight cycles or 400 days after accumulating 10,000 total flight cycles since first flight of the airplane, whichever occurs first.

(3) If any cracking is found during any inspection required by this AD, before further flight, accomplish all applicable corrective actions in accordance with the instructions of Airbus AOT A320–27A1186, Revision 04, dated April 3, 2009.

(4) Submit a report of the findings of the inspection required by paragraphs (f)(1) and (f)(2) of this AD to Airbus in accordance with the instructions of Airbus AOT A320–27A1186, Revision 04, dated April 3, 2009; at the applicable time specified in paragraph (f)(4)(i) or (f)(4)(ii) of this AD.

(i) If the inspection was done after the effective date of this AD: Submit the report within 40 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 40 days after the effective date of this AD.

(5) As of the effective date of this AD, no person may install on any airplane an elevator servo-control rod eye-end unless it has been inspected in accordance with the instructions of Airbus AOT A320–27A1186, Revision 04, dated April 3, 2009.

(6) Actions done before the effective date of this AD in accordance with Airbus AOT A320–27A1186, dated June 23, 2008; Revision 01, dated August 11, 2008; Revision 02, dated March 30, 2009; or Revision 03, dated April 1, 2009; are acceptable for compliance with the corresponding actions required by this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to Attn: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0149, dated August 5, 2008; and Airbus AOT A320–27A1186, Revision 04, dated April 3, 2009; for related information.

Material Incorporated by Reference

(i) You must use Airbus All Operators Telex A320–27A1186, Revision 04, dated April 3, 2009, to do the actions required by this AD, unless the AD specifies otherwise. (The document number and issue date of Airbus AOT A320–27A1186, Revision 04, dated April 3, 2009, are specified only on the first page of the AOT.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; *e-mail:* account.airworth-eas@airbus.com; Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 7, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19636 Filed 8–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30682; Amdt. No. 3335]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 18, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 2009.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *http://nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082 Oklahoma City, OK 73125) *telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on August 7, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

. . . Effective Upon Publication

FDC Date	State	City	Airport	FDC No.	Subject
07/22/09 ...	NY	ISLIP	LONG ISLAND MAC ARTHUR	9/8067	THIS NOTAM PUBLISHED IN TL09–18 IS HEREBY RESCINDED IN ITS ENTIRETY. RNAV (GPS) RWY 6, ORIG
07/24/09 ...	NC	CURRITUCK	CURRITUCK COUNTY RGNL	9/0779	RNAV (GPS) RWY 23, ORIG
07/27/09 ...	CA	MOJAVE	MOJAVE	9/1138	GPS RWY 22, ORIG
07/27/09 ...	CA	MOJAVE	MOJAVE	9/1139	GPS RWY 4, ORIG
07/27/09 ...	PA	PHILADELPHIA	NORTHEAST PHILADELPHIA	9/1328	RNAV (GPS) RWY 24, ORIG
07/27/09 ...	PA	PHILADELPHIA	NORTHEAST PHILADELPHIA	9/1329	VOR RWY 6, AMDT 12
07/27/09 ...	PA	MONONGAHELA	ROSTRAVER	9/1331	RNAV (GPS) RWY 8, ORIG
07/27/09 ...	PA	PHILADELPHIA	NORTHEAST PHILADELPHIA	9/1332	ILS OR LOC RWY 24, AMDT 12
07/27/09 ...	PA	MONONGAHELA	ROSTRAVER	9/1333	RNAV (GPS) RWY 26, ORIG
07/27/09 ...	PA	PHILADELPHIA	NORTHEAST PHILADELPHIA	9/1334	RNAV (GPS) RWY 15, ORIG
07/27/09 ...	PA	PHILADELPHIA	NORTHEAST PHILADELPHIA	9/1335	RNAV (GPS) RWY 6, ORIG
07/27/09 ...	PA	PHILADELPHIA	NORTHEAST PHILADELPHIA	9/1336	LOC BC RWY 6, AMDT 7
07/27/09 ...	PA	PHILADELPHIA	NORTHEAST PHILADELPHIA	9/1337	VOR RWY 24, AMDT 19
07/27/09 ...	PA	PHILADELPHIA	NORTHEAST PHILADELPHIA	9/1338	RNAV (GPS) RWY 33, ORIG
08/06/09 ...	LA	NATCHITOCHES	NATCHITOCHES RGNL	9/1653	LOC RWY 35, AMDT 3D
08/06/09 ...	LA	NATCHITOCHES	NATCHITOCHES RGNL	9/1654	NDB RWY 35, AMDT 5
07/29/09 ...	IA	PELLA	PELLA MUNI	9/1699	NDB RWY 34, AMDT 7B
07/29/09 ...	CA	SAN JOSE	NORMAN Y. MINETA SAN JOSE INTL.	9/2126	RNAV (GPS) RWY 11, ORIG–A
07/29/09 ...	CA	SAN JOSE	NORMAN Y. MINETA SAN JOSE INTL.	9/2127	VOR RWY 12R, AMDT 4
07/29/09 ...	CA	SAN JOSE	NORMAN Y. MINETA SAN JOSE INTL.	9/2128	RNAV (GPS) RWY 12L, AMDT 1
07/29/09 ...	CA	SAN JOSE	NORMAN Y. MINETA SAN JOSE INTL.	9/2129	RNAV (GPS) RWY 30R, AMDT 1
07/29/09 ...	CA	SAN JOSE	NORMAN Y. MINETA SAN JOSE INTL.	9/2130	RNAV (GPS) RWY 29, ORIG–B
07/29/09 ...	CA	SAN JOSE	NORMAN Y. MINETA SAN JOSE INTL.	9/2131	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 6
08/03/09 ...	ID	IDAHO FALLS	IDAHO FALLS REGIONAL	9/2431	ILS OR LOC RWY 20, AMDT 11D
08/03/09 ...	CA	SACRAMENTO	SACRAMENTO INTL	9/2432	ILS OR LOC RWY 16R, AMDT 14B
08/03/09 ...	CA	LANCASTER	GENERAL WM J FOX AIRFIELD	9/2436	TAKEOFF MINIMUMS AND OBSTACLE DP, ORIG
08/04/09 ...	OK	ALTUS	ALTUS/QUARTZ MOUNTAIN RGNL	9/2646	VOR A, AMDT 4C
08/05/09 ...	OK	ENID WOODRING RGNL	ENID	9/2896	TAKEOFF MINIMUMS AND (OBSTACLE) DEPARTURE PROCEDURES AMDT 3

[FR Doc. E9–19657 Filed 8–17–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30681; Amdt. No. 3334]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 18, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 18, 2009.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this

material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082, Oklahoma City, OK 73125) *Telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest, and where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule '' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979) ; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on August 7, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 27 AUG 2009

Bethel, AK, Bethel, RNAV (GPS) RWY 1R, Orig.
Bethel, AK, Bethel, RNAV (GPS) RWY 19L, Orig.
Lewiston, ID, Lewiston-Nez Perce County, ILS RWY 26, Amdt 12.
Lewiston, ID, Lewiston-Nez Perce County, RNAV (GPS) RWY 8, Amdt 1.
Lewiston, ID, Lewiston-Nez Perce County, RNAV (GPS) RWY 12, Amdt 1.
Lewiston, ID, Lewiston-Nez Perce County, RNAV (GPS) RWY 26, Orig.
Lewiston, ID, Lewiston-Nez Perce County, VOR RWY 26, Amdt 13.
Teterboro, NJ, Teterboro, Takeoff Minimums and Obstacle DP, Amdt 6.
Tooele, UT, Bolinder Field-Tooele Valley, ILS OR LOC/DME RWY 17, Amdt 1.
Tooele, UT, Bolinder Field-Tooele Valley, RNAV (GPS) Y RWY 17, Orig.
Tooele, UT, Bolinder Field-Tooele Valley, RNAV (GPS) Z RWY 17, Amdt 2.

Effective 24 SEP 2009

Washington, DC, Ronald Reagan Washington Natl, VOR/DME RNAV OR GPS RWY 4, Amdt 6B, CANCELLED.
Hollywood, FL, North Perry, Takeoff Minimums and Obstacle DP, Amdt 3.
Plains, GA, Peterson Field, Takeoff Minimums and Obstacle DP, Orig.
Dixon, IL, Dixon Muni-Charles R Walgreen Field, RNAV (GPS) RWY 8, Orig–A.
Dixon, IL, Dixon Muni-Charles R Walgreen Field, RNAV (GPS) RWY 26, Orig–A.
Dixon, IL, Dixon Muni-Charles R Walgreen Field, VOR–A, Amdt 10A.
Moline, IL, Quad City Intl, ILS OR LOC RWY 27, Amdt 2.
Moline, IL, Quad City Intl, RNAV (GPS) RWY 13, Amdt 1.
Moline, IL, Quad City Intl, RNAV (GPS) RWY 31, Amdt 1.
Millinocket, ME, Millinocket Muni, VOR RWY 29, Orig–A.

Clinton, NC, Sampson County, Takeoff Minimums and Obstacle DP, Amdt 1.
Fayetteville, NC, Fayetteville Regional/ Grannis Field, LOC BC RWY 22, Amdt 7.
Fayetteville, NC, Fayetteville Regional/ Grannis Field, RNAV (GPS) RWY 22, Amdt 3.
Fayetteville, NC, Fayetteville Regional/ Grannis Field, VOR RWY 22, Amdt 7.
Hatteras, NC, Billy Mitchell, Takeoff Minimums and Obstacle DP, Orig.
Lincolnton, NC, Lincolnton-Lincoln Rgnl, GPS RWY 5, Orig, CANCELLED.
Lincolnton, NC, Lincolnton-Lincoln Rgnl, RNAV (GPS) RWY 5, Orig.
Lincolnton, NC, Lincolnton-Lincoln Rgnl RNAV (GPS) RWY 23, Orig.
Teterboro, NJ, Teterboro, RNAV (GPS) Y RWY 6, Amdt 2.
Teterboro, NJ, Teterboro, RNAV (RNP) RWY 19, Orig.
Teterboro, NJ, Teterboro, RNAV (RNP) Z RWY 6, Orig.
Jamestown, TN, Jamestown Muni, Takeoff Minimums and Obstacle DP, Orig.
Provo, UT, Provo Muni, RNAV (GPS) RWY 13, Amdt 1A.
Green Bay, WI, Austin Straubel Intl, VOR/ DME OR TACAN RWY 36, Amdt 10.

Effective 22 OCT 2009

Jackson, TN, Mc Kellar-Sipes Rgnl, VOR RWY 2, Amdt 13.
Livingston, TN, Livingston Muni, RNAV (GPS) RWY 3, Orig.
Livingston, TN, Livingston Muni, RNAV (GPS) RWY 21, Orig.
Livingston, TN, Livingston Muni, Takeoff Minimums and Obstacle DP, Amdt 2.
Livingston, TN, Livingston Muni, VOR/DME RWY 21, Amdt 5.

[FR Doc. E9–19658 Filed 8–17–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

RIN 1215–AB66

Claims for Compensation; Death Gratuity Under the Federal Employees' Compensation Act

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: This document contains the interim final regulations governing the administration of the death gratuity created by section 1105 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, by the Department of Labor (Department or DOL). Section 1105 provides a death gratuity payment to eligible survivors of Federal employees and non-appropriated fund instrumentality employees (NAFI employees) who die of injuries incurred in connection with service with an Armed Force in a contingency operation. Section 1105 amended the Federal Employees' Compensation Act (FECA) to add a new section, designated as section 8102a. The Secretary of Labor has the authority to administer and to decide all questions arising under FECA. 5 U.S.C. 8145. FECA authorizes the Secretary to prescribe rules and regulations necessary for the administration and enforcement of the Act. 5 U.S.C. 8149. The Secretary has delegated the authority provided by 5 U.S.C. 8145 and 8149 to the Assistant Secretary for Employment Standards who then delegated that authority to the Director of the Office of Workers' Compensation Programs (OWCP), who is responsible for the administration and implementation of FECA. 20 CFR 1.1. Thus OWCP will administer the adjudication of claims and the payment of the death gratuity under new section 8102a.

DATES: *Effective Date:* This interim final rule is effective on August 18, 2009.

Applicability date: This interim final rule applies to all claims filed on or after August 18, 2009. This rule also applies to any claims that are pending before OWCP on August 18, 2009.

Comments: The Department invites comments on the interim final rule from interested parties. Comments on the interim final rule must be postmarked by October 19, 2009. Written comments on the new information collection requirements in this rule must be postmarked by October 19, 2009.

ADDRESSES: You may submit comments on the interim final rule, identified by Regulatory Information Number (RIN) 1215–AB66, by any ONE of the following methods:

Federal e-Rulemaking Portal: The Internet address to submit comments on the rule is *http://www.regulations.gov*. Follow the Web site instructions for submitting comments.

Mail: Submit written comments to Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, NW., Washington, DC 20210. Because of security measures, mail directed to Washington, DC is sometimes delayed. We will only consider comments postmarked by the U.S. Postal Service or other delivery service on or before the deadline for comments.

Instructions: All comments must include the RIN 1215–AB66 for this rulemaking. Receipt of any comments, whether by mail or Internet, will not be acknowledged. Because DOL continues to experience delays in receiving postal mail in the Washington, DC area, commenters are encouraged to submit any comments by mail early.

Comments on the interim final rule will be available for public inspection during normal business hours at the address listed above for mailed comments. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this interim final rule may be obtained in alternative formats (e.g., large print, audiotape or disk) upon request. To schedule an appointment to review the comments and/or to obtain the interim final rule in an alternative format, contact OWCP at 202–693–0031 (this is not a toll-free number).

Written comments on the new information collection requirements described in this interim final rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for Employment Standards Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, NW., Washington, DC 20210, *Telephone:* 202–693–0031 (this is not a toll-free number).

Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, was enacted on January 28, 2008. Section 1105 of Public Law 110–181 amended the FECA, creating a new section 8102a. The section establishes a new FECA benefit for eligible survivors of Federal employees and NAFI employees who die of injuries incurred in connection with service with an Armed Force in a contingency operation. The new section 8102a states that the United States will pay a death gratuity of up to $100,000 to those survivors upon receiving official notification of the employee's death.

II. Administrative Procedure Act Issues

Section 8102a was effective upon enactment of Public Law 110–181, on January 28, 2008. It states that the United States will pay the death gratuity of up to $100,000 to the eligible survivors ''immediately upon receiving official notification'' of an employee's death. The section also contains a retroactive payment provision, stating that the death gratuity will be paid for employees of certain agencies who died on or after October 7, 2001, due to injuries incurred in connection with service with an Armed Force in the theater of operations of Operation Enduring Freedom and Operation Iraqi Freedom. Both the immediate payment provision and the retroactive payment provision strongly suggest that the Department act as quickly as possible to implement section 8102a.

Therefore, the Department believes that the ''good cause'' exception to APA notice and comment rulemaking applies to this rule. Under that exception, pre-adoption procedures are not required ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). DOL cannot adjudicate claims and pay the death gratuity in every potential claim until these regulations are promulgated. The Department believes that the lengthy steps necessary for the usual notice and comment under the APA would be contrary to Congress' intention that the death gratuity be paid as soon as possible, especially in the case of survivors to whom the retroactive payment provision applies, where the employee may have died years ago.

Publication of a notice of proposed rulemaking in the **Federal Register**, which entails among other things, receipt of, consideration of, and response to comments submitted by interested parties; modification of the proposed rules, if appropriate; and publication in the **Federal Register** would take many months at a minimum, further delaying payment to deserving survivors of employees covered by this benefit. DOL does not believe that the benefits that might be gained from further consideration of these rules outweigh the delay in making payments to survivors as soon as possible, as intended by Congress when it required that these payments be made ''immediately upon receiving official notification.'' Family members and other survivors left behind by those brave individuals, who gave their lives in furtherance of the nations' strategic and vital interests here and abroad, deserve the government's compassionate response without further delay.

While some initial claims may be paid easily without issuance of a rule interpreting and implementing this new FECA provision, many of the claims covered by this provision require regulatory guidance to adjudicate. Published regulations are the best vehicle to provide authoritative guidance concerning this provision since it incorporates standards and terms quite different from those applicable to many of the requirements for adjudicating workers' compensation claims under FECA. Accordingly, the Department believes that under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice and comment rulemaking procedures because issuance of proposed rules would be impracticable and contrary to the public interest.

While notice and comment rulemaking is being waived, the Department is interested in comments and advice regarding changes that should be made to these interim regulations. The Department will carefully consider all comments on the regulations contained in this interim final rule postmarked on or before October 19, 2009 and will publish the final regulations with any necessary changes.

Under the APA, substantive rules generally cannot take effect until 30 days after the rule is published in the **Federal Register**. However, section 553(d)(3) of the APA states that agencies may waive this 30-day requirement for ''good cause'' and establish an earlier effective date. As explained above, the Department believes that there is ''good cause'' for waiver of the APA requirement for notice and comment rulemaking because it would be impracticable and contrary to the public interest for the Department to fulfill that requirement. Similarly, the Department believes that the ''good cause'' exception to the 30-day effective date requirement for substantive rules in the APA applies to this rule, because observing this requirement would be both impractical and contrary to the public interest. As noted above, DOL will not be able to adjudicate all claims under new section 8102a until the regulations in this rule are in effect. Since Congress has directed that the United States pay the death gratuity ''immediately,'' the Department believes that ''good cause'' exists for waiver of the usual 30-day effective date requirement for substantive rules and for this rule to become effective immediately upon the date of its publication in the **Federal Register**.

DOL believes that it would be clearly contrary to the public interest and would serve no purpose to delay the effective date of this rule beyond the date of its publication in the **Federal Register**. The thirty day delay would provide no benefit to any party while further delaying DOL's ability to implement this provision.

III. Overview of the Regulations

In enacting section 1105 of Public Law 110–181, Congress created a new FECA benefit of a death gratuity up to $100,000 for survivors of employees who die of injuries incurred in connection with their service with an Armed Force in a contingency operation. DOL has determined for equitable reasons that every death gratuity will be paid in the amount of $100,000. (The $100,000 gratuity is offset by other death gratuities that have been paid for the same death.) These regulations will further define which deaths qualify for the payment of the death gratuity. The regulations will also describe the processes that OWCP will use so that claimants who are survivors and alternate beneficiaries of deceased employees will receive payment of the death gratuity as intended by Congress. Finally, the regulations will explain how OWCP will apply the statutory offset provision for each death gratuity payment.

20 CFR Part 10, Subpart J

Section 10.900

The death gratuity is payable to claimants who are survivors or designated beneficiaries of ''an employee who dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation.'' Section 8102a. Section 10.900 adopts the same definition of ''Armed Force'' as found in 10 U.S.C. 101(a)(4): '' 'armed forces' means the Army, Navy, Air Force, Marine Corps, and Coast Guard.''

Subsection 10.900(b) explains that the death gratuity payment in section 8102a is a FECA benefit, as defined by section 10.5(a) of part 10. Because Congress enacted the death gratuity as section 8102a in the FECA, all the provisions and definitions in the FECA and in parts 10 and 25 are applicable to the death gratuity unless otherwise specified in section 8102a and these regulations. The FECA provisions applicable to the death gratuity include, for example, the timeliness provisions for filing a claim in section 8122 of the FECA, the

definition of injury in section 8101(5) of the FECA, and the various administrative provisions applicable to a FECA claim.

Pursuant to section 8137 of FECA and the applicable regulations, OWCP is required to pay an employee suffering a FECA covered injury who is neither a citizen of the United States nor a resident of the United States or Canada the lesser of workers' compensation benefits under FECA or local law. Since the new death gratuity payment is a FECA benefit, it will be included in that determination and thus will not be payable to such an employee where it is determined that the local law applicable to such employee provides a lesser benefit than that available under FECA.

Section 10.901

Section 10.901 restates Congress' definition of ''employee'' in new section 8102a. For purposes of the death gratuity, the term ''employee'' has the meaning as stated in section 8101(1) of the FECA and also includes NAFI employees as defined in section 1587(a)(1) of Title 10 of the United States Code.

Section 10.902

The death gratuity is payable to survivors and other designated beneficiaries of employees who die of injuries incurred in connection with their service with an Armed Force in a contingency operation. Section 10.902 clarifies that every such eligible death that occurs after the date of the enactment of Public Law 110–181 qualifies for the death gratuity.

Section 10.903

Section 10.903 implements the retroactivity provision contained in new section 8102a. The statute gives ''the Secretary concerned'' discretion to apply the death gratuity retroactively to employee deaths that occurred on or after October 7, 2001, and before the date of enactment of section 8102a, if the deaths resulted from injuries incurred in connection with an employee's service with an Armed Force in the theater of operations of Operation Enduring Freedom or Operation Iraqi Freedom. New section 8102a does not further define ''Secretary concerned'' nor does it indicate any limits on the discretion of the ''Secretary concerned'' to apply the death gratuity retroactively. The Department interprets the ''Secretary concerned'' to mean the Secretary in charge of the employing agency of an employee who died in the circumstances specified in new section 8102a. The administration of any agency or non-appropriated fund instrumentality not headed by a Secretary will be considered ''the Secretary concerned'' for purposes of this provision.

Furthermore, in order to promote efficiency in the administration of this benefit and to provide equal treatment and clear guidance to all covered employees and beneficiaries, DOL has requested that employing agencies whose employees are potentially covered by this new benefit make a determination concerning retroactive coverage in time for this rule to reflect that determination and inform all survivors of employees who died as a result of covered injuries during the retroactive period whether they are entitled to benefits pursuant to this provision.

DOL engaged in an extensive outreach effort to determine whether any agencies desired to exclude survivors of employees who died as a result of covered injuries during the retroactive period. This effort included sending a letter to the Chief Human Capital Officer (or equivalent) of every Federal agency (as well as the Department of Defense on behalf of nonappropriated fund instrumentality employees) notifying them of the procedure for informing DOL of their decision concerning retroactive coverage. To minimize the burden on agencies, no action was requested of agencies wishing to have their employees included in retroactive coverage. The letter requested that agencies wishing to opt out of such coverage send a letter to DOL stating their desire to opt out of retroactive coverage. In addition to sending these individual letters, DOL distributed copies of the letter at the quarterly interagency FECA meeting held on June 9 attended by agency human resource staff, posted a notice on its website informing agencies of their options concerning retroactive coverage, and emailed workers' compensation contacts at each Federal agency notifying them of the web posting. No agencies chose to opt out of retroactive coverage. Accordingly, new section 8102a of FECA will apply retroactively to all employees covered by section 10.903.

Section 10.904

New section 8102a is a FECA benefit, and under FECA, the term ''injuries'' includes occupational diseases in addition to traumatic injuries. Section 10.904 explains that the death gratuity is applicable to employee deaths due to occupational diseases incurred in connection with the employee's service with an Armed Force in a contingency operation.

Section 10.905

Section 10.905 states that if an employee dies of injuries incurred in connection with his or her service with an Armed Force in a contingency operation, the death will qualify for the death gratuity regardless of how long after that injury the employee dies. As with other FECA death benefits, there is no requirement that the employee's death occur within a certain time period after an injury to qualify for the death gratuity benefit. While the death gratuity for members of the Armed Forces, codified at 10 U.S.C. 1475–1480, requires that the death of a member of the Armed Forces occur within 120 days after discharge to qualify for that gratuity, *see* 10 U.S.C. 1476, new section 8102a contains no similar statutory requirement.

Section 10.906

Section 10.906 explains the definitions applicable to survivors for purposes of the death gratuity. Many of these terms are specifically defined in section 1105 of Public Law 110–181. These statutory definitions of survivors in new section 8102a differ from the existing definitions of the same terms in the FECA at 5 U.S.C. 8101. The definitions in section 8102a and in section 10.906 are solely applicable to subpart J and do not alter any existing definitions of the same terms in any other subpart of Part 10. Thus in certain circumstances the survivors eligible for payment of the death gratuity under new section 8102a will differ from the survivors eligible for compensation for the death of Federal employees under section 8133 of FECA.

The text of section 8102a that defines the terms applicable to survivors is a duplication of the former 10 U.S.C. 1477, which defines eligible survivors for the death gratuity paid to members of the Armed Forces who die from injuries incurred during active duty or inactive duty training. 10 U.S.C. 1475–1480. 10 U.S.C. 1477 was originally enacted on September 2, 1958. *See* Public Law 85–861, 72 Stat. 1452, 1453 (1958). Its language remained unchanged until it was amended by section 645 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Congress used the definitions in the original section 1477 for the death gratuity in new section 8102a.

Subsection 10.906(a)(1) defines ''surviving spouse'' as ''the person who was legally married to the deceased employee at the time of his or her death.'' Subsection 10.906(a)(1) adopts the definition of ''surviving spouse''

from the Department of the Navy regulations applicable to the original 10 U.S.C. 1477. The Navy regulations were first promulgated in September 1959, and the definition of ''surviving spouse'' remained unchanged throughout the life of the original 10 U.S.C. 1477. Since Congress duplicated the original section 1477 for the death gratuity in new section 8102a, subsection 10.906(a)(1) adopts the Navy regulation's long-standing definition of ''surviving spouse.''

Subsection 10.906(a)(2) states the definition of ''children'' given in new section 8102a. Unlike the FECA definition of ''child'' at 5 U.S.C. 8101(9), section 8102a defines ''children'' to mean all of the employee's natural children, adopted children, and some stepchildren without regard to the child's age, marital status, or dependency on the employee. Section 8102a includes stepchildren in the definition of ''children'' if the stepchild was part of the employee's household at the time of the employee's death. Subsection 10.906(a)(2)(A) defines ''household'' for this purpose. The definition limits eligible stepchildren to those who were sharing a household with the employee pursuant to a written custody agreement or who were actually sharing a home for the majority of the time. For a natural child who is an illegitimate child of a male employee to be considered an eligible survivor of that employee, the child must satisfy one of the four criteria listed in section 10.906(a)(2)(B). These criteria are specifically contained in new section 8102a.

Subsection 10.906(a)(3) states the definition of ''parents.'' New section 8102a states that parents include fathers and mothers through adoption and persons who stood *in loco parentis* to the employee for a period of not less than one year at any time before the person became an employee. Subsection 10.906(a)(3)(A) explains that a person stood *in loco parentis* to an employee when the person assumed the status of parent toward the employee. A person will be considered to stand *in loco parentis* when the person takes a child of another into his or her home and treats the child as a member of his or her family, providing parental supervision, support, and education as if the child were his or her own child. New section 8102a mandates that only one father and one mother, or their counterparts *in loco parentis* may be recognized in any case and that preference will be given to those who exercise a parental relationship on the date, or most nearly before the date, on which the decedent became an employee. These requirements are stated at subsection 10.906(a)(3)(B–C).

Section 10.907

Section 10.907 states the order of precedence OWCP will use to determine which survivors will receive payment of the death gratuity under this subpart. This order of precedence is explicitly provided by new section 8102a. The third place in the order of precedence is taken by an employee's parents, brothers, or sisters, as designated by the employee, if the employee before his or her death completes a survivor designation according to the procedures described in section 10.909. If the employee does not complete any such survivor designation, the order of precedence will move directly to the employee's parents in equal shares, followed by the employee's siblings in equal shares.

Section 10.908

In addition to the survivor designation mentioned in subsection 10.907(c), section 10.908 explains that an employee before his or her death can designate an alternate beneficiary or beneficiaries to receive up to 50 percent of the death gratuity. The alternate beneficiary designation is separate from the order of precedence. For example, an employee may designate an alternate beneficiary to receive 50% of the death gratuity payment. If that employee's death qualifies for the death gratuity, and the employee is survived by his spouse, the employee's spouse will receive 50% of the death gratuity and the designated alternate beneficiary will receive 50%. The alternate beneficiary can be any person, including anyone named in the order of precedence, but it must be an actual living person rather than a trust or corporation or other legal entity. The procedure to designate an alternate beneficiary is discussed in section 10.909.

Section 10.909

Section 10.909 discusses the procedure by which an employee may make a survivor designation under subsection 10.907(c) or an alternate beneficiary designation under section 10.908. Subsection 10.909(a) explains that designation form CA–40, Designation of a Recipient of the Death Gratuity Payment under Section 1105 of Public Law 110–181, must be used to make both types of designations. The designation form may be completed at any time before the employee's death, regardless of the time of injury. The form will not be valid unless it is signed by the employee and it is received and signed prior to the death of the employee by the supervisor of the employee or by another official of the employing agency authorized to do so. This requirement is intended to ensure that all designation forms are authentic.

When making a survivor designation under subsection 10.907(c), an employee may designate any combination of any of his or her parents, brothers, or sisters to occupy the third space in the order of precedence under section 10.907. Subsection 10.909(c) explains that if the employee designates any of his or her parents, brothers, or sisters under the survivor designation provision in subsection 10.907(c), but the designation fails to specify what percent of the death gratuity each designated survivor should receive, DOL will honor the designation by disbursing the death gratuity to each designated survivor in equal shares, if the persons in the third place of the order of precedence are entitled to receive payment for a particular employee.

Subsection 10.909(d) explains that unlike the survivor designation, if an employee makes an alternate beneficiary designation but fails to indicate the percentage to be paid to the alternate beneficiary, the designation to that person will be invalid. The alternate beneficiary designation is treated differently from the survivor designation because the entitlement of any alternate beneficiaries to a portion of the death gratuity is not as clear as the survivors' entitlement, because the survivors are named in the order of precedence. Therefore, an employee must fully complete designation form CA–40, specifying an alternate beneficiary's name and what percentage of the gratuity he or she should receive, to ensure that OWCP can honor the designation. Additionally, new section 8102a requires that designations to alternate beneficiaries be in 10 percent increments, up to the maximum of 50 percent. Therefore, no more than five alternate beneficiaries may be designated.

Subsection 10.909(b) states that any paper executed prior to the effective date of this regulation that specifies an alternate beneficiary of the death gratuity payment will serve as a valid designation as long as it is in writing, was completed before the employee's death, was signed by the employee, and was signed prior to the death of the employee by the supervisor of the employee or by another official of the employing agency authorized to do so. DOL acknowledges that employees who have already suffered fatal injuries incurred while performing work in contingency operations did not have

access to designation form CA–40. DOL will honor designations made by these employees as long as the document used to make the designation includes all the assurances of authenticity that are required of form CA–40.

Section 10.910

Section 10.910 explains what happens if a person entitled to a portion of the death gratuity payment dies after the death of the covered employee but before receiving his or her portion of the death gratuity. Since the statute provides that, ''[i]f a person entitled to all or a portion of a death gratuity under paragraph (1) or (4) dies before the person receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by paragraph (1),'' the death gratuity is not inheritable. 5 U.S.C. 8102a(d)(5). These provisions are not applicable to an individual potentially eligible to receive all or a portion of a death gratuity because of family relationship or designation who dies prior to the death of a covered employee because that person was never ''entitled to all or a portion of a death gratuity.''

Accordingly, subsection 10.910(a) states that if a person who is entitled to all or a portion of the death gratuity due to his or her place in the order of precedence in section 10.907 dies after the death of the covered employee but before receiving payment, that portion will be paid to the living survivor(s) otherwise eligible according to the order of precedence. For example, an employee has no living spouse but has three children. If the employee dies, his three children would be entitled to equal shares of the death gratuity according to the order of precedence. If one of those children dies after the employee dies but before receiving payment, that portion of the death gratuity would be paid to the next person in the statutory order of preference, the surviving parents. If there is no other entitled beneficiary, that portion of the gratuity will not be paid.

Subsection 10.910(b) explains that if a survivor designated according to subsection 10.907(c) dies after the death of the covered employee but before receiving a portion of the death gratuity to which he or she is entitled, the portion will be paid to the next living survivor in the statutory order of precedence. For example, an employee with no spouse and no children designates under subsection 10.907(c) that her mother receive 50 percent of the death gratuity, her older brother receive 30 percent, and her two younger sisters receive 10 percent each. One of the sisters dies before receiving payment. That 10 percent designation would pass to the next living survivor according to the order of precedence; in this case, that would be the surviving parents pursuant to section 8102a(d)(1)(D). Assuming that the employee's father was alive, he would receive 5% and the employee's mother would receive 55%. If the employee's mother is the only surviving parent, she would receive a total of 60 percent of the death gratuity.

Subsection 10.910(c) explains what happens if a person designated as an alternate beneficiary under section 10.908 dies after the death of the covered employee but before receiving payment of his or her designated portion of the death gratuity. If the designated alternate beneficiary dies after the death of the covered employee but before receiving payment, the designation will have no effect. Pursuant to section 8102a(d)(5), the portion designated to be paid to that person will be paid according to the statutory order of precedence listed in section 10.907.

Subsection 10.910(d) clarifies that if there are no living eligible survivors or alternate beneficiaries, the death gratuity will not be paid.

Section 10.911

Section 10.911 explains how the death gratuity payment process is initiated. Subsection 10.911(a) explains that there are two ways to initiate the process. The employing agency may initiate the death gratuity payment process by filing form CA–42, Official Notice of Employee's Death For Purposes of FECA Section 8102a Death Gratuity, with OWCP, which notifies OWCP of the employee's death. A claimant may also initiate the death gratuity payment process by filing a claim with OWCP to receive the death gratuity payment. Regardless of how the payment process is initiated, both filings must occur for OWCP to pay the death gratuity. If the payment process is initiated by the employing agency filing notification of the employee's death, each claimant must then file a claim with OWCP to receive payment of the gratuity. Each claimant must file a claim so that OWCP has the correct contact information for each claimant and proof of each claimant's status as an eligible beneficiary of the death gratuity payment. Alternatively, if a claimant initiates the death gratuity payment process by filing a claim, the employing agency must then complete the death notification form CA–42 and file it with OWCP. Additional claimants must also complete their own claim forms.

Subsection 10.911(b) outlines what will happen when the employing agency files death notification form CA–42. First of all, an employing agency must notify OWCP immediately upon learning of any employee's death that may be eligible for benefits under this subpart. With this notification, the agency must submit to OWCP any designation forms (form CA–40) completed by the employee. Finally, the agency must also provide to OWCP as much information as possible about any living survivors or alternate beneficiaries of which the agency is aware. When OWCP receives all this information from the employing agency, OWCP will contact any living survivors or alternate beneficiaries it is able to identify and provide to them the death gratuity claim form CA–41, Claim For Benefits Under FECA Section 8102a Death Gratuity, with information explaining how to file a claim.

Subsection 10.911(c) explains a claimant's responsibilities when filing a claim for the death gratuity payment, and it states what will happen when OWCP receives that claim. A claimant may use form CA–41 to file a claim for the death gratuity. The claimant must provide any information that he or she has about any other beneficiaries who may be entitled to the death gratuity payment, including the Social Security Numbers of those other beneficiaries, if known, and all known contact information. The claimant must also disclose the Social Security Number of the deceased employee and identify the agency that employed the deceased employee when he or she incurred the injury that caused his or her death, if the claimant knows this information. Upon receiving the information from the claimant, OWCP will contact the employing agency to notify it that it must complete and submit the death notification form CA–42 for the employee. OWCP will also contact any other living survivors or alternate beneficiaries it is able to identify and provide to them the death gratuity claim form CA–41 with information explaining how to file a claim.

Subsection 10.911(d) explains the responsibilities of an employing agency if a claimant submits a claim for the death gratuity to the agency rather than to OWCP. In this instance, the agency must promptly transmit the claim to OWCP. This includes any claim forms CA–41 that the agency receives and any other claims or papers submitted to the agency which appear to claim compensation on account of the employee's death.

Section 10.912

Section 10.912 describes the requirements to establish a claim for the death gratuity payment, which are also described on claim form CA–41. Just as in all claims for compensation under the FECA, the claimant bears the burden of proof to establish each one of these elements. (*See, e.g.,* 20 CFR 10.115.) Although the employing agency will often provide much of the required information when it completes the death notification form CA–42, the claimant bears the ultimate burden of proof. The evidence required in this subpart must stand up to the same requirements as evidence submitted to establish other FECA compensation claims: the evidence should be in writing, and it must be reliable, probative, and substantial. (*See id.*)

The first requirement that the claimant must establish is that the claim for the death gratuity was filed within the time limits specified by the FECA, as prescribed in 5 U.S.C. 8122 and in this part. This will be evaluated exactly as it is for all other claims for FECA compensation. Subsection 10.912(a) clarifies that the timeliness of a death gratuity claim will be measured from the date the claimant filed a claim, not the date the employing agency submitted death notification form CA–42.

Subsection 10.912(b) gives the second requirement for a death gratuity claim: the claimant must establish that the deceased employee was in fact an employee of the United States or a NAFI employee at the time he or she incurred the injury or disease that caused his or her death. Again, this is the same requirement as in all other claims for compensation under the FECA.

Subsection 10.912(c) states that the claimant must establish that the employee suffered an injury or disease and that the employee's death was causally related to that injury or disease. Causation will be evaluated as it is in other FECA claims. The death certificate of the employee must be provided. Although the employing agency will often provide the death certificate and other needed medical documentation, OWCP may request from the claimant any additional documentation needed to establish the claim.

Subsection 10.912(d) describes the requirement that sets the death gratuity payment apart from other FECA benefits: the claimant must establish that the deceased employee incurred the fatal injury or disease ''in connection with the employee's service with an Armed Force in a contingency operation.'' This is the requirement that defines the scope of coverage for the death gratuity payment, as stated in the text of new section 8102a. Subsection 10.912(d) explains and defines the terms contained in that statutory language.

Subsection 10.912(d)(1) explains the definition of ''contingency operation.'' Section 8102a defines ''contingency operation'' as having ''the meaning given to that term in section 1482a(c) of Title 10 of the United States Code.'' Section 1482a(c) states, ''The term 'contingency operation' includes humanitarian operation, peacekeeping operations, and similar operations.'' There is a more narrow definition of ''contingency operation'' in section 101 of Title 10, which is the definitions section of Title 10, but Congress chose the broader definition of ''contingency operation'' contained in section 1482a(c) for purposes of the death gratuity payment. (DOL notes that Congress chose the narrower definition of ''contingency operation'' in section 585 of the National Defense Authorization Act for Fiscal Year 2008.) Therefore, subsection 10.912(d)(1) explains the definitions of all the different types of ''contingency operations'' that are included in section 1482a(c), including the basic ''contingency operation,'' a ''humanitarian operation,'' and a ''peacekeeping operation.'' The definitions of all three of these different types of operations are included in the definition of ''contingency operation'' for purposes of this subpart. ''Similar operations'' are also included and will be determined by OWCP on a case-by-case basis.

Subsection 10.912(d)(1)(A) quotes the definition of ''contingency operation'' from 10 U.S.C. 101(a)(13). The first part of this definition of ''contingency operation'' is ''military operation that is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.'' The second part of this definition includes any military operation that results in the call or order to active duty of members of the uniformed services during a war or national emergency declared by the President or Congress. The definition provides a list of different authorizing statutes under which the call to active duty may occur, including statutes that would apply to military operations that would take place within the United States. Therefore, a ''contingency operation'' under the definition at 10 U.S.C. 101(a)(13) may take place either within the United States or outside the United States.

Subsection 10.912(d)(1)(B) provides the definition of ''humanitarian operation'' and ''peacekeeping operation'' as stated in 10 U.S.C. 2302(8). A ''humanitarian operation'' is ''a military operation in support of the provision of humanitarian or foreign disaster assistance,'' and a ''peacekeeping operation'' is ''a military operation * * * in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations.'' Subsection 10.912(d)(1)(C) further defines ''humanitarian assistance'' as the definition provided in 10 U.S.C. 401(e).

All of these definitions have been quoted directly from Title 10. New section 8102a clearly intends the definition of ''contingency operation'' for purposes of this death gratuity to have the same meaning as the term has for the Armed Forces. Therefore, DOL adopted the definitions given to all the different types of ''contingency operations'' from Title 10, which governs the Armed Forces.

Subsection 10.912(d)(2) clarifies that a ''contingency operation'' may take place within the United States or abroad. Although the Armed Forces rarely conduct contingency operations in the United States, none of the above definitions of ''contingency operation'' exclude that possibility. However, subsection 10.912(d)(2) also explains that operations of the National Guard are only considered ''contingency operations'' for purposes of this subpart when the President, the Secretary of the Army, or the Secretary of the Air Force calls the members of the National Guard into service. The National Guard is made up of the Army National Guard and the Air National Guard, and both are reserve components of the Armed Forces. (*See* 10 U.S.C. 101(c).) Members of the National Guard can be activated by the President, or by the Secretaries of the Army or the Air Force. Although members of the National Guard can be called into service by the Governor of a state, these operations of the National Guard will not be considered ''contingency operations'' under this subpart and therefore the death gratuity is not applicable to service with the National Guard in these Governor-led operations.

Subsection 10.912(d)(3) states that a claim for a death gratuity must show that the employee incurred the injury or disease while in the performance of duty as that phrase is defined for the purposes of otherwise awarding benefits under the FECA. This requirement is suggested by the statutory language ''in

connection with the employee's service,'' and it is also consistent with the award of other FECA compensation.

In addition to showing that the employee was in the performance of duty when he or she incurred injury, a claimant must show that the employee's service was related to an Armed Force's contingency operation to qualify for the death gratuity. The death gratuity is not meant for every employee who dies from an injury incurred while in the performance of duty. Only those employees whose service is related to a contingency operation are covered. Subsections 10.912(d)(4) and (5) explain the evidentiary burden that a claim must satisfy to show this relation. Subsection 10.912(d)(4) states the evidentiary standard for claims regarding a fatal injury incurred by an employee serving outside the United States: if an employee incurs injury while in the performance of duty serving outside the United States in the same region in which an Armed Force is conducting a contingency operation, OWCP will find that the injury or disease satisfies the requirement that it was incurred ''in connection with the employee's service with an Armed Force in a contingency operation,'' unless there is conclusive evidence that the employee's service was not supporting the Armed Force's operation. The subsection also clarifies that OWCP considers service in economic or social development projects, such as service on Provincial Reconstruction Teams, in a region in which an Armed Force is conducting a contingency operation to be supporting the Armed Force's operation.

The evidentiary burden here recognizes that if an employee is serving outside the United States in the same region in which an Armed Force is conducting a contingency operation, the employee's service is apt to be related to that contingency operation, because the United States governmental activities in the region will of necessity be closely coordinated with the Armed Force's operation. Additionally, activities of covered employees in these areas will be seen as relating to the ongoing contingency operation by the affected populace, and hostilities may be directed at the employees because of that perception. OWCP also recognizes the difficulties involved in accessing and providing evidence regarding the circumstances of an employee's service in a foreign country. Accordingly, OWCP will find that the employee's service in a foreign country is related to a contingency operation if the service is being performed in the same region as that operation, unless OWCP receives conclusive evidence to the contrary.

An illustration for example is as follows: a tsunami hits the southern portion of Country Q in Southeast Asia, causing massive devastation. The United States military mobilizes members of the Armed Forces in a humanitarian operation to provide aid to the affected area. An Army helicopter dispatched to deliver supplies crashes into an aid station on the coast, killing two Department of State employees working at the military aid station. OWCP receives death notification form CA–42 describing the employees' deaths, stating that at the time of their deaths they were serving as translators at the aid station at the site of the tsunami. The two Department of State employees' deaths will qualify for the death gratuity. An employee of the Department of Agriculture was vacationing at one of the hotels destroyed by the tsunami, and she dies. Her death would not qualify for the death gratuity because she was not in the performance of duty. On the same day, the Consul General of the Consulate in the far northern part of Country Q is killed in a car accident while traveling from his office to a meeting in the middle of the day. Because of the humanitarian operation being conducted in southern Country Q, the Department of State files form CA–42, notifying OWCP of the Consul's death. (All employers must file form CA–42 for any employee's death that *may* be eligible for benefits under this subpart. *See* subsections 10.911(b) and 10.914(a).) However, on the form, State describes the circumstances of the Consul's death, submitting evidence that the meeting the Consul was attending was regarding data security procedures in the Consul's office. If OWCP receives a claim for the death gratuity, OWCP will evaluate the evidence provided by the Department of State and determine whether the purpose of the Consul's meeting had any relation to the tsunami contingency operation, and determine whether northern Country Q is in the same region as the operation. If the evidence was conclusive that the meeting had no relation to the contingency operation, or that the scope of the operation was strictly limited to southern Country Q, OWCP will deny the claim for the death gratuity.

Subsection 10.912(d)(5) explains that a claim based on the death of an employee who was serving within the United States when he or she incurred injury must positively establish that the employee's service was supporting a contingency operation of an Armed Force. The claimant bears a different evidentiary burden to show that an employee's service within the United States was related to a contingency operation of an Armed Force. This is because federal employees and NAFI employees routinely perform service within the United States, and it is not reasonable to infer, from their mere presence in a covered region while in the performance of duty, that their service is in support of a domestic contingency operation. In the rare event that an Armed Force is conducting a contingency operation within the United States, the claimant must supply evidence to show that the employee's service was actually supporting the contingency operation rather than simply being tangentially related to a situation in which an Armed Force was somehow involved.

An illustration follows: the President activates a number of National Guard troops in Operation Blue, aimed at stopping illegal immigration from Mexico to the United States. Some of the troops are deployed in McAllen, Texas. On the fourth day of Operation Blue, a mail carrier in McAllen is killed in a car accident while delivering mail. If the mail carrier's surviving spouse files a claim for the death gratuity, he would have to provide evidence to show how the mail carrier's routine duties were supporting the National Guard's operation. If the claim did not contain evidence that her service was supporting the operation, her death would not qualify for the death gratuity. On the same day, a National Guardsman and an employee of the Department of Homeland Security are killed in a construction accident while in the performance of duty building a fence at the border. If survivors of the Homeland Security employee file a claim for the death gratuity, they would need to provide evidence that the employee's work was supporting the National Guard's operation. If they provided sufficient evidence, OWCP will accept the claim.

Section 10.912(e) states the final requirement for a claim for the death gratuity: a claimant must establish his or her relationship to the deceased employee, so that OWCP can determine which survivors are eligible to receive the death gratuity payment under the order of precedence in section 10.907. The documentation required is described in the instructions to claim form CA–41. This requirement is similar to the documentation required to establish eligibility for FECA death benefits under 5 U.S.C. 8133.

Section 10.913

Section 10.913 contains examples of situations that OWCP considers to clearly qualify for the death gratuity payment. If an employee incurred injury while serving under the direction or supervision of an official of an Armed Force conducting a contingency operation, or while riding with members of an Armed Force in a vehicle or other conveyance deployed to further an Armed Force's objectives in a contingency operation, the employee's service is clearly related to the Armed Force's contingency operation. If the employee's death results from injuries incurred in either of these situations, the death will qualify for the death gratuity. This in no way is meant to signify that the employee was performing a combat mission, an entirely different legal and factual standard, which could impact benefits payable under insurance policies.

OWCP believes that these examples will assist employing agencies and claimants in understanding the death gratuity payment. However, numerous other situations may also qualify for the death gratuity payment, which OWCP will determine on a case-by-case basis.

Section 10.914

The death gratuity payment is an unusual extension of the FECA, because it only applies to a certain group of employees—those employees whose deaths result from injuries incurred ''in connection with the employee's service with an Armed Force in a contingency operation.'' Because an employing agency will have direct access to most of the information needed to determine whether its employee was injured ''in connection with'' his or her service ''with an Armed Force in a contingency operation,'' and most claimants will not have access to that information, employing agencies have significant responsibilities in the death gratuity claim process. Section 10.914 lists the responsibilities of the employing agency.

First, subsection 10.914(a) explains that the employing agency must provide as much information as possible about the circumstances of the employee's injury, especially the employee's assigned duties at the time of the injury. An agency fulfills this requirement by completely filling out the death notification form CA–42 and submitting it to OWCP. The agency must also complete the form as promptly as possible upon learning of an employee's death, so that OWCP can disburse the death gratuity payment as soon as possible.

If a claimant submits a claim form CA–41 or any other paper appearing to claim compensation to the employing agency, the agency must promptly transmit that claim to OWCP, as stated in subsection 10.914(b).

Subsection 10.914(c) explains an essential responsibility of the employing agency: the agency must maintain any designation forms (forms CA–40) or other papers appearing to make designations under sections 10.907(c) or 10.908 in the employee's official personnel file. The forms should be signed by the employee and by a representative of the agency. The agency must transmit any such designations to OWCP when it submits the death notification form CA–42 to OWCP.

Subsection 10.914(d) states the responsibility of an employing agency when a survivor is claiming the death gratuity based on his or her status as an illegitimate child of a deceased male employee. New section 8102a lists four different ways an illegitimate child of a male decedent can prove that he or she is eligible to receive the death gratuity. Those have been quoted in section 10.906(a)(2)(B) of this subpart. One method of proving eligibility is for the claimant to show that he or she has proved ''by evidence satisfactory to the employing agency'' to be a natural child of the decedent. Therefore, if OWCP cannot determine whether the claimant qualifies as a child of the decedent according to any of the other three methods listed, OWCP may request the employing agency to determine whether the claimant has provided sufficient evidence to show that he or she is a child of the decedent. In that situation, it is the employing agency's responsibility to evaluate the evidence and transmit its determination promptly to OWCP.

Because of the offset provision that is discussed in greater detail below in section 10.916, an employing agency must notify OWCP of any other death gratuity payments under any other law of the United States for which an employee's death qualifies and any other death gratuity payments that have been paid based on the employee's death. This responsibility is stated in subsection 10.914(e).

Finally, subsection 10.914(f) clarifies that non-appropriated fund instrumentalities have the same responsibilities under this subpart as any other employing agency.

Section 10.915

Section 10.915 lists the responsibilities of OWCP in the death gratuity payment process. At the initiation of the process, OWCP will prompt the employing agency to submit the death notification form CA–42 if the agency has not done so, or OWCP will identify living potential claimants and provide them with claim forms CA–41 with instructions on how to file a claim for the death gratuity payment. OWCP will then review all the information provided by the claimant and employing agency to determine whether the claim satisfies all the requirements listed in section 10.912. If the information is not sufficient to satisfy those requirements, OWCP will notify the claimant of additional evidence needed. The claimant will then be allowed at least 30 days to submit additional evidence. OWCP may also request more information from the employing agency. Finally, if the claim satisfies all the required elements, OWCP will calculate the amount of the death gratuity payment and pay the beneficiaries as soon as possible after accepting the claim.

Section 10.916

Section 10.916 explains how OWCP will calculate the amount of the death gratuity. DOL has determined for equitable reasons that every death gratuity will be paid in the amount of $100,000. Subsection 10.916(a) explains that the death gratuity payment for each employee death is equal to $100,000 minus the amount of any death gratuity payments that have been paid under any other law of the United States based on that same death. The Conference Report language for section 8102a makes clear that Congress intended the offset provision in new section 8102a to apply only to other death gratuity payments and not to other federal benefits such as compensation for death under section 8133 of the FECA, retirement benefits under chapter 84 of Title 5, life insurance benefits under chapter 87 of Title 5, or any other federal benefit. *See* Conference Report for the National Defense Authorization Act for Fiscal Year 2008, H.R. Rep. No. 110–477, at 1008–09 (2007). A death gratuity payment is a payment in the nature of a gift, beyond reimbursement for death expenses, relocation costs, or other similar death benefits. Subsection 10.916(a) clarifies that funeral expenses under 5 U.S.C. 8134 and the death benefits provided to an employee's survivors under 5 U.S.C. 8133 are not death gratuity payments, and they therefore have no effect on the amount of the death gratuity under this subpart.

Subsection 10.916(b) gives a list of examples of death gratuity payments that would affect the amount of the death gratuity under this subpart. This list is not exclusive, but it is meant to

name the most common death gratuity statutes for ease of reference and to provide examples of those payments that would be considered death gratuity payments.

Subsection 10.916(c) clarifies that the total amount of the death gratuity payment will be calculated before it is disbursed to the employee's various survivors or alternate beneficiaries. Therefore, after it has accepted a claim for the death gratuity, OWCP first subtracts the amount of any other death gratuities that have already been paid based on the same death. After the total amount of the death gratuity for the particular employee has been calculated, OWCP will then disburse the payment according to the order of precedence and any designations that the employee may have completed. Subsection 10.916(c) provides three examples to illustrate this process.

IV. Administrative Requirements for the Rulemaking

Executive Order 12866

This regulatory action constitutes a ''significant'' rule within the meaning of Executive Order 12866 in that any executive agency could be required to participate in the development of claims for benefits under this regulatory action. The Department believes, however, that this regulatory action will not have a significant economic impact on the economy, or any person or organization subject to the changes, in that the annual amount of benefits paid under this section is expected to be approximately one million dollars. The changes have been reviewed by the Office of Management and Budget for consistency with the President's priorities and the principles set forth in Executive Order 12866.

Regulatory Flexibility Act of 1980

This rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. The Department has concluded that the rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Paperwork Reduction Act (PRA)

The new collections of information contained in this rulemaking have been submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995. No person is required to respond to a collection of information request unless the collection of information displays a valid OMB control number. The new information collection requirements are set forth in §§ 10.909, 10.911, 10.912, 10.914 and 10.915, and they relate to information required to be submitted by claimants and the employing agencies as part of the claims adjudication process. To implement these new collections, the Department is proposing to create three new forms (*see* sections A through C below).

The Department would like to solicit comments to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

A. Designation of a Recipient of the Death Gratuity Payment Under Section 1105 of Public Law 110–181 (Form CA–40)

Summary: New section 8102a allows people covered by that section to designate an alternative order of payment of the death gratuity amongst family members and to designate an alternative person to receive no more than 50% of the death gratuity payment. Form CA–40 provides the means to make such designations. Form CA–40 asks the person covered to provide an alternative order of payment, including each designee's address, relationship to the person covered, and the percentage amount to be given to that designee. Form CA–40 also allows the person covered the opportunity to designate an additional person to receive a percentage of the death gratuity, and asks the person covered to provide that designee's address and the percentage to be given to that designee (up to the statutory maximum of 50%). All employees who complete this form will be required to sign and date this form. The form must also be signed by the appropriate official of the employing establishment to establish a valid designation.

Need: Pursuant to section 8102a, which allows for designations, this form is necessary for an accurate record of such designation, and for an accurate payment to the appropriate designees in the event of a covered claim.

Respondents and frequency of response: While not every covered employee will file such a designation, the Department anticipates that those employees who are routinely deployed in support of a contingency operation may file as many as three Form CA–40s over the course of their employment. According to the report of the Subcommittee on Oversight and Investigations of the House Armed Service Committee, ''Deploying Federal Civilians to the Battlefield, April 2008,'' there have been ''nearly 10,000 federal civilian employees'' deployed to Iraq and Afghanistan over the past seven years, averaging 1,400 annually. Utilizing this number, as well as considering there will be additional federal civilian employees domestically and abroad whose agencies may request them to complete the designation form, the OWCP estimates that 2,600 designation forms will be filed annually.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form CA–40 is estimated to take an average of 15 minutes per covered employee. The Department estimates that there will be 2,600 such filings a year, for a total annual burden of 650 hours.

B. Claim For Benefits Under FECA Section 8102a Death Gratuity (Form CA–41)

Summary: The claims adjudication process begins with a requirement that a claimant file a written claim for benefits with the Department on or after July 31, 2001. The ''Claim For Benefits Under FECA Section 8102a Death Gratuity'' (Form CA–41) is used to initiate this process and to insure that OWCP has the basic factual information necessary to process the claim, including the identities of the eligible beneficiaries of the covered employee. OWCP may also require claimants to provide factual information in support of any responses made on Form CA–41. All claimants will be required to swear or affirm that the information provided on the Form CA–41 is true.

Need: Pursuant to section 8102a, a claim for benefits is necessary to initiate the payment process and to provide the information necessary to pay the survivors of the covered employee.

Respondents and frequency of response: The Office of Workers'

Compensation Programs (OWCP) has been tracking federal civilian injuries and deaths resulting from incidents or exposures arising in Iraq since March 2004. Through the end of FY 2008, there have been 220 claims accepted for injuries or exposures sustained in Iraq. Of those 220 accepted claims, 14 have been claims arising from the death of the Federal civilian employee.

OWCP also has been tracking Federal civilian injuries and deaths resulting from incidents or exposures arising in Afghanistan, but only since October, 2007. Through the end of FY 2008, there have been 25 claims accepted for injuries or exposures sustained in Afghanistan and only 1 of those claims was for the death of the employee.

Based upon these data, OWCP projects about 10 death claims per year as an upper limit estimate. Assuming each claim is paid at the maximum allowable rate, this would result in expenditures of $1 million or less annually. It is important to note, however, that the projection is based on a very limited amount of data and that a single significant event could result in substantially higher than projected expenditures. Accordingly, as it is estimated that each claim will have an average of 2.5 claimants, it is estimated that 25 claimants annually will file one Form CA–41

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form CA–41 is estimated to take an average of 15 minutes per claimant for a total annual burden of 6.25 hours.

C. Official Notice of Employee's Death for Purposes of FECA Section 8102a Death Gratuity (Form CA–42)

Summary: Section 8102a provides that payment under that section is to be made immediately upon ''official'' notice of a covered employee's death. Form CA–42 provides the means for the employing agency to provide the official notice to OWCP. Form CA–42 asks the employing agency to provide OWCP the necessary information regarding the employee's death. Form CA–42 further requires the employing agency to provide OWCP with the death certificate of that employee. Form CA–42 also requires that the employing agency certify that the employee was a covered employee under Section 8102a and to forward information about survivors and designated alternate beneficiaries.

Need: As section 8102a provides that payment must be made following official notice of the death of a covered employee, Form CA–42 is necessary to provide the means to submit the official notice to OWCP.

Respondents and frequency of response: As discussed above, it is estimated that 10 Form CA–42 notices will be filed annually.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form CA–42 is estimated to take an average of 20 minutes per form for a total annual burden of 3.33 hours.

The National Environmental Policy Act of 1969

The Department certifies that this rule has been assessed in accordance with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). The Department concludes that NEPA requirements do not apply to this rulemaking because this rule includes no provisions impacting the maintenance, preservation, or enhancement of a healthful environment.

Federal Regulations and Policies on Families

The Department has reviewed this rule in accordance with the requirements of section 654 of the Treasury and General Government Appropriations Act of 1999, 5 U.S.C. 601 note. These regulations were not found to have a potential negative affect on family well-being as it is defined thereunder.

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The Department certifies that this rule has been assessed regarding environmental health risks and safety risks that may disproportionately affect children. These regulations were not found to have a potential negative affect on the health or safety of children.

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

The Department has reviewed this rule in accordance with the requirements of Exec. Order No. 13132, 64 FR 43225 (Aug. 10, 1999), and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local, or tribal governments or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

The Department has reviewed this rule in accordance with Exec. Order 13,175, 65 FR 67249 (Nov. 9, 2000), and has determined that it does not have ''tribal implications.'' The rule does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

The Department has reviewed this rule in accordance with Exec. Order 12630, 53 FR 8859 (Mar. 15, 1988), and has determined that it does not contain any ''policies that have takings implications'' in regard to the ''licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.''

Executive Order 13211: Energy Supply, Distribution, or Use

The Department has reviewed this regulation and has determined that the provisions of Exec. Order 13211, 66 FR 28355 (May 18, 2001), are not applicable as there are no direct or implied effects on energy supply, distribution, or use.

The Privacy Act of 1974, 5 U.S.C. 552a, as Amended

While claims filed under section 8102a of the FECA will be a separate claim file and bear a separate claim number from any other FECA claim file maintained on the covered employee, the collection and release of these files will be conducted under the provisions of the Privacy Act and the published systems of record notices for FECA claims files. Therefore, the Department has determined that this rule will require a minor revision of the current Privacy Act System of Records, DOL/GOVT–1, Office of Workers' Compensation Programs, Federal Employees' Compensation Act File, 67 FR 16826 (April 8, 2002).

Clarity of This Regulation

Executive Order 12866, 58 Fed. Reg. 51735 (September 30, 1993), and the President's memorandum of June 1,

1998, require each agency to write all rules in plain language. The Department invites comments on how to make this rule easier to understand.

List of Subjects in 20 CFR Part 10

Administrative practice and procedure, Claims, Death gratuity, Government employees, Labor, Workers' compensation, NAFI.

■ For the reasons set forth in the preamble, 20 CFR part 10 is amended by adding subpart J, consisting of §§ 10.900 through 10.916, to read as follows:

Subpart J—Death Gratuity

Sec.

Authority: 5 U.S.C. 8102a.

Subpart J–Death Gratuity

§ 10.900 What is the death gratuity under this subpart?

(a) The death gratuity authorized by 5 U.S.C. 8102a and payable pursuant to the provisions of this subpart is a payment to a claimant who is an eligible survivor (as defined in §§ 10.906 and 10.907) or a designated alternate beneficiary (as defined in §§ 10.908 and 10.909) of an employee who dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation. This payment was authorized by section 1105 of Public Law 110–181 (2008). For the purposes of this subchapter, the term ''Armed Force'' means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) This death gratuity payment is a FECA benefit, as defined by § 10.5(a) of this part. All the provisions and definitions in this part apply to claims for payment under this subpart unless otherwise specified.

§ 10.901 Which employees are covered under this subpart?

For purposes of this subpart, the term ''employee'' means all employees defined in 5 U.S.C. 8101 and § 10.5(h) of this part and all non-appropriated fund instrumentality employees as defined in section 1587(a)(1) of title 10 of the United States Code.

§ 10.902 Does every employee's death due to injuries incurred in connection with his or her service with an Armed Force in a contingency operation qualify for the death gratuity?

Yes. All such deaths that occur on or after January 28, 2008 (the date of enactment of Public Law 110–181 (2008)) qualify for the death gratuity administered by this subpart.

§ 10.903 Is the death gratuity payment applicable retroactively?

An employee's death qualifies for the death gratuity if the employee died on or after October 7, 2001, and before January 28, 2008, if the death was a result of injuries incurred in connection with the employee's service with an Armed Force in the theater of operations of Operation Enduring Freedom or Operation Iraqi Freedom.

§ 10.904 Does a death as a result of occupational disease qualify for payment of the death gratuity?

Yes—throughout this subpart, the word ''injury'' is defined as it is in 5 U.S.C. 8101(5), which includes a disease proximately caused by employment. If an employee's death results from an occupational disease incurred in connection with the employee's service in a contingency operation, the death qualifies for payment of the death gratuity under this subpart.

§ 10.905 If an employee incurs a covered injury in connection with his or her service with an Armed Force in a contingency operation but does not die of the injury until years later, does the death qualify for payment of the death gratuity?

Yes—as long as the employee's death is a result of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation, the death qualifies for the death gratuity of this subpart regardless of how long after the injury the employee's death occurs.

§ 10.906 What special statutory definitions apply to survivors under this subpart?

For the purposes of paying the death gratuity to eligible survivors under this subpart, OWCP will use the following definitions:

(a) ''Surviving spouse'' means the person who was legally married to the deceased employee at the time of his or her death.

(b) ''Children'' means, without regard to age or marital status, the deceased employee's natural children and adopted children. It also includes any stepchildren who were a part of the decedent's household at the time of death.

(1) A stepchild will be considered part of the decedent's household if the decedent and the stepchild share the same principal place of abode in the year prior to the decedent's death. The decedent and stepchild will be considered as part of the same household notwithstanding temporary absences due to special circumstances such as illness, education, business travel, vacation travel, military service, or a written custody agreement under which the stepchild is absent from the employee's household for less than 180 days of the year.

(2) A natural child who is an illegitimate child of a male decedent is included in the definition of ''children'' under this subpart if:

(i) The child has been acknowledged in writing signed by the decedent;

(ii) The child has been judicially determined, before the decedent's death, to be his child;

(iii) The child has been otherwise proved, by evidence satisfactory to the employing agency, to be the decedent's child; or

(iv) The decedent had been judicially ordered to contribute to the child's support.

(c) ''Parent'' or ''parents'' mean the deceased employee's natural father and

mother or father and mother through adoption. It also includes persons who stood *in loco parentis* to the decedent for a period of not less than one year at any time before the decedent became an employee.

(1) A person stood *in loco parentis* when the person assumed the status of parent toward the deceased employee. (Any person who takes a child of another into his or her home and treats the child as a member of his her family, providing parental supervision, support, and education as if the child were his or her own child, will be considered to stand *in loco parentis.*)

(2) Only one father and one mother, or their counterparts *in loco parentis,* may be recognized in any case.

(3) Preference will be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent became an employee.

(d) ''Brother'' and ''sister'' mean any person, without regard to age or marital status, who is a natural brother or sister of the decedent, a half-brother or half-sister, or a brother or sister through adoption. Step-brothers or step-sisters of the decedent are not considered a ''brother'' or a ''sister.''

§ 10.907 What order of precedence will OWCP use to determine which survivors are entitled to receive the death gratuity payment under this subpart?

If OWCP determines that an employee's death qualifies for the death gratuity, the FECA provides that the death gratuity payment will be disbursed to the living survivor(s) highest on the following list:

(a) The employee's surviving spouse.

(b) The employee's children, in equal shares.

(c) The employee's parents, brothers, and sisters, or any combination of them, if designated by the employee pursuant to the designation procedures in § 10.909.

(d) The employee's parents, in equal shares.

(e) The employee's brothers and sisters, in equal shares.

§ 10.908 Can an employee designate alternate beneficiaries to receive a portion of the death gratuity payment?

An employee may designate another person or persons to receive not more than 50 percent of the death gratuity payment pursuant to the designation procedures in § 10.909. Only living persons, rather than trusts, corporations or other legal entities, may be designated under this subsection. The balance of the death gratuity will be paid according to the order of precedence described in § 10.907.

§ 10.909 How does an employee designate a variation in the order or percentage of gratuity payable to survivors and how does the employee designate alternate beneficiaries?

(a) Form CA–40 must be used to make a variation in the order or percentages of survivors under § 10.907 and/or to make an alternate beneficiary designation under § 10.908. A designation may be made at any time before the employee's death, regardless of the time of injury. The form will not be valid unless it is signed by the employee and received and signed prior to the death of the employee by the supervisor of the employee or by another official of the employing agency authorized to do so.

(b) Alternatively, any paper executed prior to the effective date of this regulation that specifies an alternate beneficiary of the death gratuity payment will serve as a valid designation if it is in writing, completed before the employee's death, signed by the employee, and signed prior to the death of the employee by the supervisor of the employee or by another official of the employing agency authorized to do so.

(c) If an employee makes a survivor designation under § 10.907(c), but does not designate the portions to be received by each designated survivor, the death gratuity will be disbursed to the survivors in equal shares.

(d) An alternate beneficiary designation made under § 10.908 must indicate the percentage of the death gratuity, in 10 percent increments up to the maximum of 50 percent, that the designated person(s) will receive. No more than five alternate beneficiaries may be designated. If the designation fails to indicate the percentage to be paid to an alternate beneficiary, the designation to that person will be invalid.

§ 10.910 What if a person entitled to a portion of the death gratuity payment dies after the death of the covered employee but before receiving his or her portion of the death gratuity?

(a) If a person entitled to all or a portion of the death gratuity due to the order of precedence for survivors in § 10.907 dies after the death of the covered employee but before the person receives the death gratuity, the portion will be paid to the living survivors otherwise eligible according to the order of precedence prescribed in that subsection.

(b) If a survivor designated under the survivor designation provision in § 10.907(c) dies after the death of the covered employee but before receiving his or her portion of the death gratuity, the survivor's designated portion will be paid to the next living survivors according to the order of precedence.

(c) If a person designated as an alternate beneficiary under § 10.908 dies after the death of the covered employee but before the person receives his or her designated portion of the death gratuity, the designation to that person will have no effect. The portion designated to that person will be paid according to the order of precedence prescribed in § 10.907.

(d) If there are no living survivors or alternate beneficiaries, the death gratuity will not be paid.

§ 10.911 How is the death gratuity payment process initiated?

(a) Either the employing agency or a living claimant (survivor or alternate beneficiary) may initiate the death gratuity payment process. If the death gratuity payment process is initiated by the employing agency notifying OWCP of the employee's death, each claimant must file a claim with OWCP in order to receive payment of the death gratuity. The legal representative or guardian of any minor child may file on the child's behalf. Alternatively, if a claimant initiates the death gratuity payment process by filing a claim, the employing agency must complete a death notification form and submit it to OWCP. Other claimants must also file a claim for their portion of the death gratuity.

(b) The employing agency must notify OWCP immediately upon learning of an employee's death that may be eligible for benefits under this subpart, by submitting form CA–42 to OWCP. The agency must also submit to OWCP any designation forms completed by the employee, and the agency must provide as much information as possible about any living survivors or alternate beneficiaries of which the agency is aware.

(1) OWCP will then contact any living survivor(s) or alternate beneficiary(ies) it is able to identify.

(2) OWCP will furnish claim form CA–41 to any identified survivor(s) or alternate beneficiary(ies) and OWCP will provide information to them explaining how to file a claim for the death gratuity.

(c) Alternatively, any claimant may file a claim for death gratuity benefits with OWCP. Form CA–41 may be used for this purpose. The claimant will be required to provide any information that he or she has regarding any other beneficiaries who may be entitled to the death gratuity payment. The claimant must disclose, in addition to the Social Security number (SSN) of the deceased

employee, the SSNs (if known) and all known contact information of all other possible claimants who may be eligible to receive the death gratuity payment. The claimant must also identify, if known, the agency that employed the deceased employee when he or she incurred the injury that caused his or her death. OWCP will then contact the employing agency and notify the agency that it must complete and submit form CA–42 for the employee. OWCP will also contact any other living survivor(s) or alternate beneficiary(ies) it is able to identify, furnish to them claim form CA–41, and provide information explaining how to file a claim for the death gratuity.

(d) If a claimant submits a claim for the death gratuity to an employing agency, the agency must promptly transmit the claim to OWCP. This includes both claim forms CA–41 and any other claim or paper submitted which appears to claim compensation on account of the employee's death.

§ 10.912 What is required to establish a claim for the death gratuity payment?

Claim form CA–41 describes the basic requirements. Much of the required information will be provided by the employing agency when it completes notification form CA–42. However, the claimant bears the burden of proof to ensure that OWCP has the evidence needed to establish the claim. OWCP may send any request for additional evidence to the claimant and to his or her representative, if any. Evidence should be submitted in writing. The evidence submitted must be reliable, probative, and substantial. Each claim for the death gratuity must establish the following before OWCP can pay the gratuity:

(a) That the claim was filed within the time limits specified by the FECA, as prescribed in 5 U.S.C. 8122 and this part. Timeliness is based on the date that the claimant filed the claim for the death gratuity under § 10.911, not the date the employing agency submitted form CA–42.

(b) That the injured person, at the time he or she incurred the injury or disease, was an employee of the United States as defined in 5 U.S.C. 8101(1) and § 10.5(h) of this part, or a non-appropriated fund instrumentality employee, as defined in 10 U.S.C. 1587(a)(1).

(c) That the injury or disease occurred and that the employee's death was causally related to that injury or disease. The death certificate of the employee must be provided. Often, the employing agency will provide the death certificate and any needed medical documentation. OWCP may request from the claimant any additional documentation that may be needed to establish the claim.

(d) That the employee incurred the injury or disease in connection with the employee's service with an Armed Force in a contingency operation. This will be determined from evidence provided by the employing agency or otherwise obtained by OWCP and from any evidence provided by the claimant.

(1) Section 8102a defines ''contingency operation'' to include humanitarian operations, peacekeeping operations, and similar operations. (''Similar operations'' will be determined by OWCP.)

(i) A ''contingency operation'' is defined by 10 U.S.C. 101(a)(13) as a military operation that—

(A) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of [Title 10], chapter 15 of [Title 10], or any other provision of law during a war or during a national emergency declared by the President or Congress.

(ii) A ''humanitarian or peacekeeping operation'' is defined by 10 U.S.C. 2302(8) as a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing.

(iii) ''Humanitarian assistance'' is defined by 10 U.S.C. 401(e) to mean medical, surgical, dental, and veterinary care provided in areas of a country that are rural or are underserved by medical, surgical, dental, and veterinary professionals, respectively, including education, training, and technical assistance related to the care provided; construction of rudimentary surface transportation systems; well drilling and construction of basic sanitation facilities; rudimentary construction and repair of public facilities.

(2) A contingency operation may take place within the United States or abroad. However, operations of the National Guard are only considered ''contingency operations'' for purposes of this subpart when the President, Secretary of the Army, or Secretary of the Air Force calls the members of the National Guard into service. A ''contingency operation'' does not include operations of the National Guard when called into service by a Governor of a State.

(3) To show that the injury or disease was incurred ''in connection with'' the employee's service with an Armed Force in a contingency operation, the claim must show that the employee incurred the injury or disease while in the performance of duty as that phrase is defined for the purposes of otherwise awarding benefits under FECA.

(4) (i) When the contingency operation occurs outside of the United States, OWCP will find that an employee's injury or disease was incurred ''in connection with'' the employee's service with an Armed Force in a contingency operation if the employee incurred the injury or disease while performing assignments in the same region as the operation, unless there is conclusive evidence that the employee's service was not supporting the Armed Force's operation.

(ii) Economic or social development projects, including service on Provincial Reconstruction Teams, undertaken by covered employees in regions where an Armed Force is engaged in a contingency operation will be considered to be supporting the Armed Force's operation.

(5) To show that an employee's injury or disease was incurred ''in connection with'' the employee's service with an Armed Force in a contingency operation, the claimant will be required to establish that the employee's service was supporting the Armed Force's operation. The death gratuity does not cover federal employees who are performing service within the United States that is not supporting activity being performed by an Armed Force.

(e) The claimant must establish his or her relationship to the deceased employee so that OWCP can determine whether the claimant is the survivor entitled to receive the death gratuity payment according to the order of precedence prescribed in § 10.907.

§ 10.913 In what situations will OWCP consider that an employee incurred injury in connection with his or her service with an Armed Force in a contingency operation?

(a) OWCP will consider that an employee incurred injury in connection with service with an Armed Force in a contingency operation if:

(1) The employee incurred injury while serving under the direction or supervision of an official of an Armed Force conducting a contingency operation; or

(2) The employee incurred injury while riding with members of an Armed Force in a vehicle or other conveyance deployed to further an Armed Force's objectives in a contingency operation.

(b) An employee may incur injury in connection with service with an Armed Force in a contingency operation in situations other than those listed above. Additional situations will be determined by OWCP on a case-by-case basis.

§ 10.914 What are the responsibilities of the employing agency in the death gratuity payment process?

Because some of the information needed to establish a claim under this subpart will not be readily available to the claimants, the employing agency of the deceased employee has significant responsibilities in the death gratuity claim process. These responsibilities are as follows:

(a) The agency must completely fill out form CA–42 immediately upon learning of an employee's death that may be eligible for benefits under this subpart. The agency must complete form CA–42 as promptly as possible if notified by OWCP that a survivor filed a claim based on the employee's death. The agency should provide as much information as possible regarding the circumstances of the employee's injury and his or her assigned duties at the time of the injury, so that OWCP can determine whether the injury was incurred in the performance of duty and whether the employee was performing service in connection with an Armed Force in a contingency operation at the time.

(b) The employing agency must promptly transmit any form CA–41's received from claimants to OWCP. The employer must also promptly transmit to OWCP any other claim or paper submitted that appears to claim compensation on account of the employee's death.

(c) The employing agency must maintain any designations completed by the employee and signed by a representative of the agency in the employee's official personnel file or a related system of records. The agency must forward any such forms to OWCP if the agency submits form CA–42 notifying OWCP of the employee's death. The agency must also forward any other paper signed by the employee and employing agency that appears to make designations of the death gratuity.

(d) If requested by OWCP, the employing agency must determine whether a survivor, who is claiming the death gratuity based on his or her status as an illegitimate child of a deceased male employee, has offered satisfactory evidence to show that he or she is in fact the employee's child.

(e) The employing agency must notify OWCP of any other death gratuity payments under any other law of the United States for which the employee's death qualifies. The employing agency also must notify OWCP of any other death gratuity payments that have been paid based on the employee's death.

(f) Non-appropriated fund instrumentalities must fulfill the same requirements under this subpart as any other employing agency.

§ 10.915 What are the responsibilities of OWCP in the death gratuity payment process?

(a) If the death gratuity payment process is initiated by the employing agency's submission of form CA–42, OWCP will identify living potential claimants. OWCP will make a reasonable effort to provide claim form CA–41's to any known potential claimants and provide instructions on how to file a claim for the death gratuity payment.

(b) If the death gratuity payment process is initiated by a claimant's submission of a claim, OWCP will contact the employing agency and prompt it to submit form CA–42. OWCP will then review the information provided by both the claim and form CA–42, and OWCP will attempt to identify all living survivors or alternate beneficiaries who may be eligible for payment of the gratuity.

(c) If OWCP determines that the evidence is not sufficient to meet the claimant's burden of proof, OWCP will notify the claimant of the additional evidence needed. The claimant will be allowed at least 30 days to submit the additional evidence required. OWCP may also request additional information from the employing agency.

(d) OWCP will review the information provided by the claimant and information provided by the employing agency to determine whether the claim satisfies all the requirements listed in § 10.912.

(e) OWCP will calculate the amount of the death gratuity payment and pay the beneficiaries as soon as possible after accepting the claim.

§ 10.916 How is the amount of the death gratuity calculated?

The death gratuity payment under this subpart equals $100,000 minus the amount of any death gratuity payments that have been paid under any other law of the United States based on the same death. A death gratuity payment is a payment in the nature of a gift, beyond reimbursement for death and funeral expenses, relocation costs, or other similar death benefits. Only other death gratuity payments will reduce the amount of the death gratuity provided in this subpart. For this reason, death benefits provided to the same employee's survivors such as those under 5 U.S.C. 8133 as well as benefits paid under 5 U.S.C. 8134 are not death gratuity payments, and therefore have no effect on the amount of the death gratuity provided under this subpart.

(a) A payment provided under section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973), is a death gratuity payment, and if a deceased employee's survivors received that payment for the employee's death, the amount of the death gratuity paid to the survivors under this subpart would be reduced by the amount of the Foreign Service Act death gratuity. Other death gratuities that would affect the calculation of the amount payable include but are not limited to: the gratuity provision in section 1603 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109–234, June 15, 2006); the $10,000 death gratuity to the personal representative of civilian employees, at Title VI, Section 651 of the Omnibus Consolidated Appropriations Act of 1996 (Pub. L. 104–208, September 30, 1996); the death gratuity for members of the Armed Forces or any employee of the Department of Defense dying outside the United States while assigned to intelligence duties, at 10 U.S.C. 1489; and the death gratuity for employees of the Central Intelligence Agency, at 50 U.S.C. 403k.

(b) The amount of the death gratuity under this section will be calculated before it is disbursed to the employee's survivors or alternate beneficiaries, by taking into account any death gratuities paid by the time of disbursement. Therefore, any designations made by the employee under § 10.909 are only applicable to the amount of the death gratuity as described in paragraph (a) of this section. The following examples are intended to provide guidance in this administration of this subpart.

(1) *Example One.* An employee's survivors are entitled to the Foreign Service Act death gratuity; the employee's spouse received payment in the amount of $80,000 under that Act. A death gratuity is also payable under FECA; the amount of the FECA death gratuity that is payable is a total of $20,000. That employee, using Form CA–40 had designated 50% of the death gratuity under this subpart to be paid to his neighbor John Smith who is still

living. So, 50% of the death gratuity will be paid to his spouse and the remaining 50% of the death gratuity paid under this subpart would be paid to John Smith. This means the surviving spouse will receive $10,000 and John Smith will receive $10,000.

(2) *Example Two.* Employee dies in circumstances that would qualify her for payment of the gratuity under this subpart; her agency has paid the $10,000 death gratuity pursuant to Public Law 104–208. The employee had not completed any designation form. The FECA death gratuity is reduced by the $10,000 death gratuity and employee's spouse receives $90,000.

(3) *Example Three.* An employee of the Foreign Service whose annual salary is $75,000 dies in circumstances that would qualify for payment of both the Foreign Service Act death gratuity and the death gratuity under this subpart. Before his death, the employee designated that 40% of the death gratuity under this subpart be paid to his cousin Jane Smith, pursuant to the alternate beneficiary designation provision at section 10.908 and that 10% be paid to his uncle John Doe who has since died. At the time of his death, the employee had no surviving spouse, children, parents, or siblings. Therefore, the Foreign Service Act death gratuity will not be paid, because no eligible survivors according to the Foreign Service Act provision exist. The death gratuity under this subpart would equal $100,000, because no other death gratuity has been paid, and Jane would receive $40,000 according to the employee's designation. As John Doe is deceased, no death gratuity may be paid pursuant to the designation of a share of the death gratuity to him.

Signed at Washington, DC, this 29th day of July 2009.

Shelby S. Hallmark,

Acting Assistant Secretary for Employment Standards Administration.

[FR Doc. E9–18523 Filed 8–17–09; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2009–N–0665]

New Animal Drugs for Use in Animal Feeds; Semduramicin; Virginiamycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original new animal drug application (NADA) filed by Phibro Animal Health. The NADA provides for use of single-ingredient Type A medicated articles containing semduramyicin (as semduramicin sodium biomass) and virginiamycin to manufacture 2-way combination drug Type C medicated feeds for use in broiler chickens.

DATES: This rule is effective August 18, 2009.

FOR FURTHER INFORMATION CONTACT: Timothy Schell, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8116, e-mail: *timothy.schell@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Phibro Animal Health, 65 Challenger Rd., 3d floor, Ridgefield Park, NJ 07660, filed NADA 141–289 that provides for the use of AVIAX II (semduramicin sodium biomass) and STAFAC (virginiamycin) Type A medicated articles to manufacture 2-way combination drug Type C medicated feeds for broiler chickens. The NADA is approved as of July 13, 2009, and the regulations are amended in 21 CFR 558.555 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.555, add paragraphs (e)(2) through (e)(4) to read as follows:

§ 558.555 Semduramicin.

* * * * *

(e) * * *

Semduramicin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(2) 22.7	Virginiamycin 5	Broiler chickens: As in paragraph (e)(1) of this section; for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration. Withdraw 1 day before slaughter. Do not feed to laying hens. Virginiamycin provided by No. 066104 in § 510.600(c) of this chapter.	066104

Semduramicin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(3) 22.7	Virginiamycin 5 to 15	Broiler chickens: As in paragraph (e)(1) of this section; for increased rate of weight gain.	Feed continuously as sole ration. Withdraw 1 day before slaughter. Do not feed to laying hens. Virginiamycin provided by No. 066104 in § 510.600(c) of this chapter.	066104
(4) 22.7	Virginiamycin 20	Broiler chickens: As in paragraph (e)(1) of this section; for prevention of necrotic enteritis caused by *C. perfringens* susceptible to virginiamycin.	Feed continuously as sole ration. Withdraw 1 day before slaughter. Do not feed to laying hens. Virginiamycin provided by No. 066104 in § 510.600(c) of this chapter.	066104

Dated: August 12, 2009.

William T. Flynn,

Acting Director, Center for Veterinary Medicine.

[FR Doc. E9–19738 Filed 8–17–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0101]

RIN 1625–AA09

Drawbridge Operation Regulation; Sabine River, Echo, TX

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the Union Pacific Railroad Swing Span Bridge across the Sabine River, mile 19.3, at Echo, Orange County, TX. The bridge currently opens on signal with 24 hours advance notice but because of the limited number of requests for openings, the bridge owner requested an increase in the length of notification time required to open the bridge.

DATES: This rule is effective September 17, 2009.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0101 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0101 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Kay Wade, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, e-mail *kay.b.wade@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 26, 2009, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Sabine River, Echo, TX in the **Federal Register** (74 FR 13164). We received 2 comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

Due to a lack of bridge openings requested by mariners, Union Pacific Railroad Company, the bridge owner, requested a change in the operating regulation governing the Union Pacific railroad swing span bridge across the Sabine River, mile 19.3 at Echo, Texas from 24 hours advance notice to open the bridge to 14 days advance notice to open the bridge. This change allows the bridge owner to open the bridge for the passage of vessels while minimizing his requirements to staff and maintain the bridge. The bridge has a vertical clearance of 7.9 feet above Mean High Water (MHW), elevation 2.18 feet NGVD in the closed-to-navigation position and unlimited in the open-to-navigation position. In accordance with 33 CFR 117.493(a), the bridge is currently required to open on signal for the passage of marine vessels if at least 24 hours of advanced notice is given. Bridge tender logs indicate no requests for bridge openings in several years.

Discussion of Comments and Changes

The Coast Guard received a total of two comments in response to the NPRM. The comments were from Federal and State agencies having no objections to the proposal. Therefore, no change was made to the regulatory text.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The public will need to notify the bridge owner of a required opening 14 days in advance rather than 24 hours in advance. There is no change in the regulatory text published in the NPRM.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit the bridge with less than 14 days advance notice. There have been no requests for bridge openings in several years so this rule will not affect a substantial number of small entities. Vessels that can safely transit under the bridge may do so at any time. Before the effective period, we will issue maritime advisories widely available to users of the river.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Section 117.493(a) is revised to read as follows:

§ 117.493 Sabine River.

(a) The draw of the Union Pacific railroad bridge, mile 19.3 near Echo shall open on signal if at least 14 days notice is given.

* * * * *

Dated: August 4, 2009.

Mary E. Landry,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. E9–19703 Filed 8–17–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket No. CP2009–48; Order No. 267]

International Mail

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is making changes to the Competitive Product List, including adding a new contract within the Global Plus 2 product on the Competitive Product List. This is

consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements.

DATES: Effective August 18, 2009 and is applicable beginning July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 35898 (July 21, 2009).

I. Introduction
II. Background
III. Comments
IV. Commission Analysis
V. Ordering Paragraphs

I. Introduction

The Postal Service proposes to add a specific Global Plus 2 contract to the Global Plus Contract product established in Docket No. MC2008–7. For the reasons discussed below, the Commission approves the Postal Service's proposal.

II. Background

On July 13, 2009, the Postal Service filed a notice, pursuant to 39 CFR 3015.5, announcing that it has entered into two additional Global Plus 2 contracts, which it states fit within the previously established Global Plus 2 Contracts product.[1] The Postal Service states that each contract is functionally equivalent to previously submitted Global Plus 2 contracts, are filed in accordance with Order No. 112[2] and are supported by Governors' Decision No. 08–10 filed in Docket No. MC2008–7.[3] Notice at 1.

The Notice also states that in Docket No. MC2008–7, the Governors established prices and classifications for competitive products not of general applicability for Global Plus Contracts. The Postal Service relates that the instant contract is the immediate successor contract to the contract in Docket No. CP2008–16 which will expire soon, and which the Commission found to be functionally equivalent in Order No. 112.

The Postal Service contends that the instant contract should be included within the Global Plus 2 product on the Competitive Product List. *Id.*

In support, the Postal Service has filed a redacted version of the contract and related materials as Attachment 1–A. A redacted version of the certified statement required by 39 CFR 3015.5 is included as Attachment 2–A. The Postal Service states that the contract should be included within the Global Plus 2 product and requests that the instant contract be considered the ''baseline contract[s] for future functional equivalency analyses concerning this product.'' *Id.* at 2.

The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. The contract becomes effective August 1, 2009, unless regulatory reviews affect that date, and have a one-year term.

The Postal Service maintains that certain portions of each contract and certified statement required by 39 CFR 3015.5(c)(2), containing names and identifying information of the Global Plus 2 customer, related financial information, portions of the certified statement which contain costs and pricing as well as the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 3.

The Postal Service asserts the contract is functionally equivalent with the contract filed in Docket No. CP2009–49 because they share similar cost and market characteristics. It contends that they should be classified as a single product. *Id.* It states that while the existing contracts filed in Docket Nos. CP2008–16 and CP2008–17 exhibited minor distinctions, the new contracts are identical to one another. *Id.* at 4.

The instant contract is with the same Postal Qualified Wholesalers (PQW) as in Docket No. CP2008–16. Even though some terms and conditions of the contract have changed, the Postal Service states that the essence of the service to the PQW customers is offering price-based incentives to commit large amounts of mail volume or postage revenue for Global Bulk Economy (GBE) and Global Direct (GD).[4]

The Postal Service indicates that the instant contract has material differences which include removal of retroactivity provisions; explanations of price modification as a result of currency rate fluctuations or postal administration fees; removal of language on enforcement of mailing requirements; and restructuring of price incentives, commitments, penalties and clarification of continuing contractual obligations in the event of termination.

The Postal Service maintains these differences only add detail or amplify processes included in prior Global Plus 2 contracts. It contends because the instant contract has the same cost attributes and methodology as well as similar cost and market characteristics, the differences do not affect the fundamental service being offered or the essential structure of the contract. *Id.* at 8. Therefore, it asserts these contracts are ''functionally equivalent in all pertinent respects.'' *Id.* at 8.

In Order No. 250, the Commission gave notice of the filing, appointed a Public Representative, and provided the public with an opportunity to comment.[5]

On July 23, 2009, Chairman's Information Request No. 1 (CHIR No. 1) was issued with responses due by July 28, 2009. On July 28, 2009, the Postal Service provided its responses to CHIR No. 1.

III. Comments

Comments were filed by the Public Representative.[6] No other interested parties submitted comments. The Public Representative states the contract appears to satisfy the statutory criteria, but because he believes there are ambiguities in the cost methodology, his response is not an unqualified recommendation in support of the contract's approval. *Id.* at 2. He notes that relevant provisions of 39 U.S.C. 3632, 3633 and 3642 appear to be met by these additional Global Plus 2 contracts. *Id.* The Public Representative states that he believes the contracts are functionally equivalent to the existing Global Plus Contracts product. He also determines that the Postal Service has provided greater transparency and accessibility in its filings. *Id.* at 3.

The Public Representative notes that the general public benefits from the availability of these contracts in several ways: well prepared international mail adds increased efficiency in the

[1] Notice of the United States Postal Service of Filing Two Functionally Equivalent Global Plus 2 Negotiated Service Agreements, July 13, 2009 (Notice). While the Notice was filed jointly in Docket Nos. CP2009–48 and CP2009–49, the Commission will address the issues in these dockets in separate orders. The Postal Service requests that the two contracts be included in the Global Plus 2 product, and ''that they be considered the new 'baseline' contracts for future functional equivalency analyses.* * *'' *Id.* at 2.

[2] *See* Docket Nos. MC2008–7, CP2008–16 and CP2008–17, Order Concerning Global Plus 2 Negotiated Service Agreements, October 3, 2008 (Order No. 112).

[3] *See* Docket Nos. MC2008–7, CP2008–16 and CP2008–17, Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classification for Global Direct, Global Bulk Economy, and Global Plus Contracts, July 16, 2008 (Governors' Decision 08–10).

[4] The Postal Service states the commitments also account for International Priority Airmail (IPA), International Surface Air Lift (ISAL), Express Mail International (EMI), and Priority Mail International (PMI) items mailed under a separate but related Global Plus 1 contract with each customer. The Global Plus 1 contracts are the subject of a separate competitive products proceeding.

[5] Notice of Filing of Two Functionally Equivalent Global Plus 2 Negotiated Service Agreements, July 16, 2009 (Order No. 250).

[6] Public Representative Comments in Response to Order No. 250, July 23, 2009 (Public Representative Comments).

mailstream, enhanced volume results in timeliness in outbound shipments to all countries including those with small volume, and the addition of shipping options may result in expansion of mail volumes, particularly with the incentives for PQWs to promote the use of outbound international shipping resulting in expansion of these services for the Postal Service. *Id.* at 4.

Finally, he discusses the need for self-contained docket filings. In particular, he notes that the instant contract relies on data from the most recent International Cost and Revenue Analysis (ICRA), which was filed in another docket. He suggest that the Postal Service identify the location of the ICRA utilized and cited in that docket. *Id.* at 6.

IV. Commission Analysis

The Postal Service proposes to add an additional contract under the Global Plus Contracts product that was created in Docket No. MC2008–7. As filed, this docket presents two issues for the Commission to consider: (1) Whether the contract satisfies 39 U.S.C. 3633, and (2) whether the contract is functionally equivalent to previously reviewed Global Plus 2 contracts. In reaching its conclusions, the Commission has reviewed the Notice, the contract and the financial analyses provided under seal, supplemental information, and the Public Representative's comments.

Statutory requirements. The Postal Service contends that the instant contract and supporting documents filed in this docket establish compliance with the statutory provisions applicable to rates for competitive products (39 U.S.C. 3633). Notice at 2.

J. Ron Poland, Manager, Statistical Programs, Finance Department asserts Governors' Decision No. 08–10 for Global Plus Contracts establishes price floor and ceiling formulas issued on July 16, 2008. He certifies that the pricing in the instant contract meets the Governors' pricing formula and meets the criteria of 39 U.S.C. 3633(a)(1), (2) and (3). He further states that the prices demonstrate that the contract and the included ancillary services should cover their attributable costs, preclude the subsidization of competitive products by market dominant products, and should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs. Notice, Attachment 2–A.

For his part, the Public Representative indicates that the contract appears to satisfy 39 U.S.C. 3633. Public Representative Comments at 1–3.

Based on the data submitted, including the supplemental information, the Commission finds that the contract should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the contract indicates that it comports with the provisions applicable to rates for competitive products.

Functional equivalence. The Postal Service asserts that the instant contract is functionally equivalent to the contract filed in the companion proceeding, Docket No. CP2009–49, as well as with Global Plus 2 contracts filed previously because they share similar cost and market characteristics. Notice at 4. The Postal Service states that the customers under the existing and proposed contracts are the same. In addition, it notes that existing contracts exhibited some differences; the contracts proposed in Docket Nos. CP2009–48 and CP2009–49 are identical. *Id.*

Having reviewed the contracts filed in the instant proceeding and in Docket No. CP2009–49, and the Postal Service's justification, the Commission finds that the two contracts may be treated as functionally equivalent.

New baseline. The Postal Service requests that the contracts filed in Docket Nos. CP2009–48 and 2009–49 be included in the Global Plus 2 product and ''considered the new 'baseline' contracts for purposes of future functional equivalency analyses concerning this product.'' *Id.* at 2. Currently, the Global Plus 2 product consists of two existing contracts that will be superseded by the contracts in Docket Nos. CP2009–48 and CP2009–49. Under those circumstances, the new contracts need not be designated as a new product. Accordingly, the new contracts in Docket Nos. CP2009–48 and CP2009–49 will be included in the Global Plus 2 product and become the ''baseline'' for future functional equivalency analyses regarding that product.

Other considerations. If the agreement terminates earlier than anticipated, the Postal Service shall promptly inform the Commission of the new termination date.

In conclusion, the Commission finds that the negotiated service agreement submitted in Docket No. CP2009–48 is appropriately included within the Global Plus 2 product.

V. Ordering Paragraphs

It is ordered:

1. The contract filed in Docket No. CP2009–48 is included within the Global Plus 2 product (MC2008–7 and CP2009–48).

2. The existing Global Plus 2 product (MC2008–7, CP2008–16 and CP2008–17) is removed from the product list.

3. As discussed in the body of this Order, future contract filings which rely on materials filed under seal in other dockets should be self contained.

4. The Postal Service shall notify the Commission if the termination date changes as discussed in this Order.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

Issued: July 31, 2009.

By the Commission.

Ann C. Fisher,

Acting Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3030 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services

- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
- Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail
[Reserved for Class Description]
- Single-Piece Letters/Postcards
- [Reserved for Product Description]
- Bulk Letters/Postcards
- [Reserved for Product Description]
- Flats
- [Reserved for Product Description]
- Parcels
- [Reserved for Product Description]
- Outbound Single-Piece First-Class Mail International
- [Reserved for Product Description]
- Inbound Single-Piece First-Class Mail International
- [Reserved for Product Description]

Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
- High Density and Saturation Letters
- [Reserved for Product Description]
- High Density and Saturation Flats/Parcels
- [Reserved for Product Description]
- Carrier Route
- [Reserved for Product Description]
- Letters
- [Reserved for Product Description]
- Flats
- [Reserved for Product Description]
- Not Flat-Machinables (NFMs)/Parcels
- [Reserved for Product Description]

Periodicals
[Reserved for Class Description]
- Within County Periodicals
- [Reserved for Product Description]
- Outside County Periodicals
- [Reserved for Product Description]

Package Services
[Reserved for Class Description]
- Single-Piece Parcel Post
- [Reserved for Product Description]
- Inbound Surface Parcel Post (at UPU rates)
- [Reserved for Product Description]
- Bound Printed Matter Flats
- [Reserved for Product Description]
- Bound Printed Matter Parcels
- [Reserved for Product Description]
- Media Mail/Library Mail
- [Reserved for Product Description]

Special Services
[Reserved for Class Description]
- Ancillary Services
- [Reserved for Product Description]
- Address Correction Service
- [Reserved for Product Description]
- Applications and Mailing Permits
- [Reserved for Product Description]
- Business Reply Mail
- [Reserved for Product Description]
- Bulk Parcel Return Service
- [Reserved for Product Description]
- Certified Mail
- [Reserved for Product Description]
- Certificate of Mailing
- [Reserved for Product Description]
- Collect on Delivery
- [Reserved for Product Description]
- Delivery Confirmation
- [Reserved for Product Description]
- Insurance
- [Reserved for Product Description]
- Merchandise Return Service
- [Reserved for Product Description]
- Parcel Airlift (PAL)
- [Reserved for Product Description]
- Registered Mail
- [Reserved for Product Description]
- Return Receipt
- [Reserved for Product Description]
- Return Receipt for Merchandise
- [Reserved for Product Description]
- Restricted Delivery
- [Reserved for Product Description]
- Shipper-Paid Forwarding
- [Reserved for Product Description]
- Signature Confirmation
- [Reserved for Product Description]
- Special Handling
- [Reserved for Product Description]
- Stamped Envelopes
- [Reserved for Product Description]
- Stamped Cards
- [Reserved for Product Description]
- Premium Stamped Stationery
- [Reserved for Product Description]
- Premium Stamped Cards
- [Reserved for Product Description]
- International Ancillary Services
- [Reserved for Product Description]
- International Certificate of Mailing
- [Reserved for Product Description]
- International Registered Mail
- [Reserved for Product Description]
- International Return Receipt
- [Reserved for Product Description]
- International Restricted Delivery
- [Reserved for Product Description]
- Address List Services
- [Reserved for Product Description]
- Caller Service
- [Reserved for Product Description]
- Change-of-Address Credit Card Authentication
- [Reserved for Product Description]
- Confirm
- [Reserved for Product Description]
- International Reply Coupon Service
- [Reserved for Product Description]
- International Business Reply Mail Service
- [Reserved for Product Description]
- Money Orders
- [Reserved for Product Description]
- Post Office Box Service
- [Reserved for Product Description]

Negotiated Service Agreements
[Reserved for Class Description]
- HSBC North America Holdings Inc. Negotiated Service Agreement
- [Reserved for Product Description]
- Bookspan Negotiated Service Agreement
- [Reserved for Product Description]
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List
Express Mail
- Express Mail
- Outbound International Expedited Services
- Inbound International Expedited Services
- Inbound International Expedited Services 1 (CP2008–7)
- Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)

Priority Mail
- Priority Mail
- Outbound Priority Mail International
- Inbound Air Parcel Post
- Royal Mail Group Inbound Air Parcel Post Agreement

Parcel Select

Parcel Return Service

International
- International Priority Airlift (IPA)
- International Surface Airlift (ISAL)
- International Direct Sacks—M–Bags
- Global Customized Shipping Services
- Inbound Surface Parcel Post (at non-UPU rates)
- Canada Post—United States Postal service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
- International Money Transfer Service
- International Ancillary Services

Special Services
- Premium Forwarding Service

Negotiated Service Agreements
- Domestic
- Express Mail Contract 1 (MC2008–5)
- Express Mail Contract 2 (MC2009–3 and CP2009–4)
- Express Mail Contract 3 (MC2009–15 and CP2009–21)
- Express Mail Contract 4 (MC2009–34 and CP2009–45)
- Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
- Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
- Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
- Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
- Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
- Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
- Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
- Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
- Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
- Priority Mail Contract 1 (MC2008–8 and CP2008–26)
- Priority Mail Contract 2 (MC2009–2 and CP2009–3)
- Priority Mail Contract 3 (MC2009–4 and CP2009–5)
- Priority Mail Contract 4 (MC2009–5 and CP2009–6)

Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Priority Mail Contract 11 (MC2009–27 and CP2009–37)
Priority Mail Contract 12 (MC2009–28 and CP2009–38)
Priority Mail Contract 13 (MC2009–29 and CP2009–39)
Priority Mail Contract 14 (MC2009–30 and CP2009–40)
Outbound International
Direct Entry Parcels Contracts
Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
Global Plus 2 (MC2008–7 and CP2009–48)
Inbound International
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M–Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]

Part C—Glossary of Terms and Conditions [Reserved]

Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E9–19757 Filed 8–17–09; 8:45 am]
BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0294; FRL–8944–7]

Approval of Implementation Plans of Michigan: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Michigan State Implementation Plan (SIP) submitted on July 16, 2007, and on June 10, 2009. Together, the revisions address the requirements for an abbreviated Clean Air Interstate Rule (CAIR) SIP. EPA is also providing notice that the December 20, 2007, conditional approval of the July 16, 2007, submittal automatically converted to a disapproval.

DATES: This direct final rule will be effective October 19, 2009, unless EPA receives adverse comments by September 17, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0294, by one of the following methods:

1. *http://www.regulations.gov*: Follow the online instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov*.

3. *Fax:* (312) 692–2551.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Deliveries are only accepted during the regional office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The regional office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0294. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some

information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353–6960, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6960, *aburano.douglas@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

Table of Contents

I. What Action Is EPA Taking?

EPA is approving two revisions to Michigan's abbreviated CAIR SIP and at the same time is providing notice that one of those revisions, which EPA had conditionally approved, converted to a disapproval on December 20, 2008. The revision that was automatically disapproved does not fulfill the CAIR requirements on its own but does when considered in conjunction with the second revision.

On July 16, 2007, Michigan submitted a SIP revision to address the CAIR requirements. EPA conditionally approved the SIP submittal because the majority of Michigan's SIP submittal was approvable but there were several minor deficiencies that needed to be corrected. After the Michigan Department of Environmental Quality (MDEQ) failed to address all the issues in EPA's December 20, 2007, conditional approval of the submittal, the conditional approval lapsed to disapproval on December 20, 2008. Today's action provides notice of the disapproval. On April 13, 2009, MDEQ submitted a proposed SIP revision to address the deficiencies in the July 16, 2007, submittal. MDEQ requested that EPA process the April 13, 2009, submittal while the State completed the State rule adoption process. Additionally, in a letter dated May 7, 2009, MDEQ requested that ''EPA reconsider the conditional approval given to the original SIP submitted in July 2007.'' MDEQ completed the State adoption process for the rules submitted to EPA on April 13, 2009, and submitted the adopted rules as a complete SIP revision on June 10, 2009, in place of the April 13, 2009, submittal. Since the conditional approval automatically converted to a disapproval on December 20, 2008, EPA cannot ''reconsider the conditional approval'' as requested by MDEQ. However, it is clear from the aforementioned correspondence with the State, as well as correspondence accompanying the June 10, 2009, submittal, that the State intends that EPA should act on the July 16, 2007, submittal in conjunction with the June 10, 2009, SIP revision request.

The combination of these two submittals fulfills the CAIR requirements for abbreviated SIPs. The July 16, 2007, submittal generally meets the CAIR requirements, and the June 10, 2009, submittal corrects certain deficiencies EPA found with the July 16, 2007, submittal. The automatic disapproval of the July 16, 2007, submittal is inconsequential because, as explained above, we are approving both the July 16, 2007, and June 10, 2009, submittals.

II. What Is the Regulatory History of CAIR and the CAIR Federal Implementation Plans (FIPs)?

EPA published CAIR on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particles ($PM_{2.5}$) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of sulfur dioxide (SO_2), which is a precursor to $PM_{2.5}$ formation, and/or nitrogen oxides (NO_X), which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (*i.e.*, budgets) for SO_2 and NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission budgets for NO_X for the ozone season (May 1st to September 30th). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

The CAIR establishes requirements that must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport for ozone and $PM_{2.5}$. On May 25, 2005, EPA made national findings that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, three years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These findings started a two-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made, and must do so within two years unless EPA has approved a SIP revision correcting the deficiency before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR to ensure that the emissions reductions required by CAIR are achieved on schedule. The CAIR FIPs require electric generating units (EGUs) to participate in the EPA-administered CAIR SO_2, NO_X annual, and NO_X ozone season trading programs, as appropriate. The CAIR FIP trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the FIP and SIP trading programs means that these trading programs will work together to create a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone season) in all States covered by CAIR FIP or SIP trading programs for that pollutant. Further, as provided in a rule published by EPA on November 2, 2007 (72 FR 62338), a State's CAIR FIP is automatically withdrawn when EPA approves a SIP revision as fully meeting the requirements of CAIR. Where only portions of the SIP revision are approved, the corresponding portions of the FIPs are automatically withdrawn and the remaining portions of the FIP stay in place. Finally, the CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, automatically replace or supplement

certain CAIR FIP provisions (*e.g.*, the methodology for allocating NO_X allowances to sources in the *State*), while the CAIR FIP remains in place for all other provisions.

On October 19, 2007, EPA amended CAIR and the CAIR FIPs to clarify the definition of ''cogeneration unit'' and, thus, the applicability of the CAIR trading program to cogeneration units.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina* v. *EPA*, 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA*, 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to ''remedy CAIR's flaws'' consistent with its July 11, 2008, opinion, but declined to impose a schedule on EPA for completing that action. *Id.* Therefore, because EPA has not fully approved any CAIR SIP for Michigan, CAIR and the CAIR FIP are currently in effect in Michigan.

III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR, which establishes State-wide emission budgets for SO_2 and NO_X, is to be implemented in two phases. The first phase of NO_X reductions starts in 2009 and continues through 2014, while the first phase of SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter. CAIR requires *State*s to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or (2) adopting other control measures of the *State*'s choosing and demonstrating that such control measures will result in compliance with the applicable *State* SO_2 and NO_X budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that *State*s must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only *State*s that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for *State*s that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for *State*s that include all non-EGUs from their NO_X SIP Call trading programs into their CAIR NO_X ozone season trading programs.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most *State*s will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such *State*s, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of, or, if appropriate, in conjunction with the corresponding provisions of the CAIR FIPs (*e.g.*, the NO_X allowance allocation methodology).

Michigan has submitted its CAIR SIP submittals as an abbreviated CAIR SIP.

V. Analysis of Michigan's CAIR SIP Submittals

A. History of the July 16, 2007, Submittal

EPA conditionally approved Michigan's July 16, 2007, submittal on December 20, 2007 (72 FR 72256). Due to the uncertainty created by the Court's decisions to vacate and then remand CAIR, Michigan was unable to complete the rulemaking process and address the requirements of EPA's conditional approval by the December 20, 2008, deadline, and the conditional approval automatically converted to a disapproval on that date. Therefore, we are providing the required notice that the July 16, 2007, submittal automatically converted to a disapproval without further action by EPA because the December 20, 2008, deadline passed. As provided in the conditional approval, we are publishing a notice informing the public of the disapproval. On April 13, 2009, MDEQ submitted a SIP revision addressing the issues from the December 20, 2007, conditional approval. However, because of the disapproval of the July 16, 2007, submittal, in a letter dated May 7, 2009, Michigan requested that EPA consider the July 16, 2007, submittal and the April 13, 2009, submittal together as fully meeting the CAIR requirements. At the time Michigan submitted the April 13, 2009 SIP revision request, the rule revisions were not completely adopted by the *State*; therefore, MDEQ requested that EPA parallel process the submittal. On June 10, 2009, MDEQ submitted fully adopted rules for approval.

B. Analysis of the July 16, 2007, and June 10, 2009, Submittals

The rationale for now approving Michigan's July 16, 2007, submittal is the same as when we originally conditionally approved it. (Please see the original proposal and final notices for the analysis of that submittal, 72 FR 52038 and 72 FR 72256, respectively.)

EPA identified several minor deficiencies in Michigan's July 16, 2007, rules. In the June 10, 2009, submittal, MDEQ corrects the deficiencies identified by EPA, corrects other typographical errors, and clarifies portions of the rule. These minor deficiencies and the manner in which MDEQ corrected each deficiency are as follows:

1. In the December 20, 2007, conditional approval, EPA stated ''in rule 803(3), Michigan needs to add a definition for 'commence operation.' This definition, and the revised definition of 'commence commercial operation,' are necessary to take account of NO_X SIP Call units brought into the CAIR NO_X ozone season trading program that do not generate electricity for sale and to ensure that they have appropriate deadlines for certification of monitoring systems under 40 CFR Part 97.''

Correction: MDEQ has added the definition of ''commence operation'' and has also revised the definition of ''commence commercial operation.'' Both definitions now adopt by reference the definitions found in 40 CFR 97.102 and 40 CFR 97.302. Adopting these definitions ensures consistency with EPA definitions and addresses the deficiency.

2. In the December 20, 2007, conditional approval, EPA stated ''in rule 803(3)(c), Michigan needs to revise the definition for 'commence commercial operation,' as described in Condition 1, above.''

Correction: Corrected as described above for deficiency 1.

3. In the December 20, 2007, conditional approval, EPA stated ''in rule 803(3)(d)(ii), Michigan needs to revise the definition of 'electric generating unit' or 'EGU.' EPA interprets Michigan's current rule 803 as properly including in the CAIR NOx ozone season trading program all EGUs in Michigan that were subject to the NOx SIP Call trading program. Michigan must revise the rule to clarify that all EGUs in Michigan that were subject to the NOx SIP Call trading program are included in the CAIR NOx ozone season trading program.''

Correction: MDEQ has added language to clarify that all EGUs in Michigan that were subject to the NOx SIP Call trading program are included in the CAIR NOx ozone season trading program.

4. In the December 20, 2007, conditional approval, EPA stated, ''in rule 823(5)(c), Michigan needs to reference 'subrule (1)(a), (b), (c), and (d)' of the rule. While EPA interprets Michigan's current rule as limiting the new unit set-aside allocations to the amount of allowances in the set-aside, Michigan must revise this provision to clarify the mechanism for implementing this limitation on such allocations.''

Correction: MDEQ has changed this provision to correctly reference subrule (1)(a), (b), (c) and (d) of the rule.

MDEQ has made other changes that correct terminology and typographical errors. MDEQ has also clarified language in parts of the rule and in the submittal letter. These changes are in addition to the changes required by EPA for approval but they do not significantly alter the rule and are, therefore, also being approved.

VI. Disapproval Notice and Approval Action

EPA is providing notice that Michigan's July 16, 2007, abbreviated CAIR SIP submittal was automatically disapproved because MDEQ did not meet the December 20, 2008, deadline to correct certain deficiencies. This disapproval is inconsequential because EPA is approving both the July 16, 2007 and the June 10, 2009, submittals, in combination, as meeting the CAIR requirements. The June 10, 2009, submittal makes the required changes to Michigan's CAIR SIP and also makes additional minor changes to Michigan's CAIR rule that correct typographical errors and that clarify Michigan's CAIR rule.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the *State* plan if relevant adverse written comments are filed. This rule will be effective October 19, 2009 without further notice unless we receive relevant adverse written comments by September 17, 2009. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective October 19, 2009.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves *State* law as meeting Federal requirements and would impose no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this action approves pre-existing requirements under *State* law and would not impose any additional enforceable duty beyond that required by *State* law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have Tribal implications because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard and to amend the appropriate appendices in the CAIR FIP trading rules to note that approval. It does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it would approve a *State* rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve *State* choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the *State* to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272, note) do not apply. This rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Incorporated by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: August 4, 2009.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart X—Michigan

■ 2. In § 52.1170, the table in paragraph (c) entitled ''EPA—Approved Michigan Regulations'' is amended by revising entries in Part 8 ''R 336.1802a'', ''R 336.1803'', ''R 336.1821 through R

336.1826'', and ''R 336.1830 through 336.1834'' and adding entry ''R 336.1801'' in Part 8 to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*
Part 8. Emission Limitations and Prohibitions—Oxides of Nitrogen				
R 336.1801	Emission of oxides of nitrogen from non-sip call stationary sources.	5/28/09	8/18/09, [Insert page number where the document begins].	
R 336.1802a	Adoption by reference	5/28/09	8/18/09, [Insert page number where the document begins].	
R 336.1803	Definitions	5/28/09	8/18/09, [Insert page number where the document begins].	
R 336.1821	CAIR NO_X ozone and annual trading programs; applicability determinations.	5/28/09	8/18/09, [Insert page number where the document begins].	
R 336.1822	CAIR NO_X ozone season trading program; allowance allocations.	5/28/09	8/18/09, [Insert page number where the document begins].	
R 336.1823	New EGUs, new non-EGUs, and newly affected EGUs under CAIR NO_X ozone season trading program; allowance allocations.	5/28/09	8/18/09, [Insert page number where the document begins].	
R 336.1824	CAIR NO_X ozone season trading program; hardship set-aside.	6/25/07	8/18/09, [Insert page number where the document begins].	
R 336.1825	CAIR NO_X ozone season trading program; renewable set-aside.	6/25/07	8/18/09, [Insert page number where the document begins].	
R 336.1826	CAIR NO_X ozone season trading program; opt-in provisions.	6/25/07	8/18/09, [Insert page number where the document begins].	
R 336.1830	CAIR NO_X annual trading program; allowance allocations.	5/28/09	8/18/09, [Insert page number where the document begins].	
R 336.1831	New EGUs under CAIR NO_X annual trading program; allowance allocations.	5/28/09	8/18/09, [Insert page number where the document begins].	
R 336.1832	CAIR NO_X annual trading program; hardship set-aside.	5/28/09	8/18/09, [Insert page number where the document begins].	
R 336.1833	CAIR NO_X annual trading program; compliance supplement pool.	5/28/09	8/18/09, [Insert page number where the document begins].	
R 336.1834	Opt-in provisions under the CAIR NO_X annual trading program.	6/25/07	8/18/09, [Insert page number where the document begins].	
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[FR Doc. E9–19805 Filed 8–17–09; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 74, No. 158
Tuesday, August 18, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0687; Directorate Identifier 2009–NM–033–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: It has been found the occurrence of two events of aircraft being dispatched with the cargo door opened without indication. In one of the events the aircraft took off with the cargo door opened.

The unsafe condition is a cargo door opening during flight, which could result in reduced structural integrity and consequent rapid decompression of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by September 17, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; *telephone:* +55 12 3927–5852 or +55 12 3309–0732; *fax:* +55 12 3927–7546; *e-mail: distrib@embraer.com.br; Internet: http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0687; Directorate Identifier 2009–NM–033–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov;* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On April 17, 2007, we issued AD 2007–06–53, Amendment 39–15035 (72 FR 21088, April 30, 2007). That AD requires actions intended to address an unsafe condition on the products listed above.

The preamble to AD 2007–06–53 specifies that we consider the requirements ''interim action'' and that the manufacturer is developing a modification to address the unsafe condition. That AD explains that we might consider further rulemaking if a modification is developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directives 2007–03–01R1, effective June 9, 2008, and 2007–03–02R2, effective November 21, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It has been found the occurrence of two events of aircraft being dispatched with the cargo door opened without indication. In one of the events the aircraft took off with the cargo door opened.

The unsafe condition is a cargo door opening during flight, which could result in reduced structural integrity and consequent rapid decompression of the airplane. Required actions include repetitive inspections of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly and reworking the assembly; a one-time inspection for signs of damage of the lateral roller fitting on the forward and aft cargo door frames at the fuselage and

replacement of the roller if necessary, and modification of the cargo door, which ends the repetitive inspections. After accomplishing the modification, the actions include incorporating information into the maintenance program to include the operational (OPC) and functional (FNC) checks of the forward and aft cargo doors and accomplishing repetitive OPC and FNC checks. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Embraer has issued Alert Service Bulletins 170–52–A036 (for Model ERJ 170 airplanes) and 190–52–A018 (for Model ERJ 190 airplanes); both Revision 01, both dated March 23, 2007. Embraer Alert Service Bulletins 170–52–A036 and 190–52–A018, both dated March 12, 2007, were referred to in the existing AD for accomplishing the required actions. No additional work is necessary for airplanes on which the original issue of the service information has been done.

Embraer has also issued Service Bulletins 170–52–0041, Revision 01, dated June 13, 2008, and 170–52–0044, dated January 18, 2008 (for Model ERJ 170 airplanes); and Service Bulletins 190–52–0023, Revision 02, dated March 11, 2008, and 190–52–0027 dated March 20, 2008 (for Model ERJ 190 airplanes).

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 145 products of U.S. registry.

The actions that are required by AD 2007–06–53 and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the currently required actions is $80 per product.

We estimate that it would take about 7 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $17,162 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,569,690, or $17,722 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15035 (72 FR 21088, April 30, 2007) and adding the following new AD:

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket No. FAA–2009–0687; Directorate Identifier 2009–NM–033–AD.

Comments Due Date

(a) We must receive comments by September 17, 2009.

Affected ADs

(b) The proposed AD supersedes AD 2007–06–53, Amendment 39–15035.

Applicability

(c) This AD applies to EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, –100 IGW, –200 LR, –200 STD, and –200 IGW airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 52: Doors.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found the occurrence of two events of aircraft being dispatched with the cargo door opened without indication. In one of the events the aircraft took off with the cargo door opened.

The unsafe condition is a cargo door opening during flight, which could result in reduced structural integrity and consequent rapid decompression of the airplane. Required actions include repetitive inspections of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly and reworking the assembly; a one-time inspection for signs of damage of the lateral roller fitting on the forward and aft cargo door frames at the fuselage and replacement of the roller if necessary, and modification of the cargo door, which ends the repetitive inspections. After accomplishing the modification, the actions include incorporating information into the maintenance program to include the operational (OPC) and functional (FNC) checks of the forward and aft cargo doors and accomplishing repetitive OPC and FNC checks.

Compliance

(f) Required as indicated, unless accomplished previously.

Restatement of Requirements of AD 2007–06–53, With New Service Information

Preflight Verification of Correct Door Closure

(g) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: As of 24 hours after May 7, 2007 (the effective date of AD 2007–06–53), before each flight after closing the cargo doors, verify that the forward and aft cargo doors are closed flush with the fuselage skin, and that all 4 latched and locked indicators at the bottom of each door are green. Persons qualified to do this verification are mechanics and flightcrew members. If it cannot be verified that both doors are closed flush with the fuselage skin, and that all 4 latched and locked indicators at the bottom of each door are green, repair before further flight. Repeat the verification before every flight until accomplishment of the actions required by paragraph (h) of this AD.

Inspection for Interference and Damage

(h) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: Within 10 days after May 7, 2007, do the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, in accordance with the Accomplishment Instructions of Embraer Alert Service Bulletins 170–52–A036 (for Model ERJ 170 airplanes) or 190–52–A018 (for Model ERJ 190 airplanes), both dated March 12, 2007; or Revision 01, both dated March 23, 2007; as applicable. As of the effective date of this AD, use Revision 01 of the service bulletins.

(1) Remove the roller fitting cover plate on the forward and aft cargo door frames.

(2) Perform a detailed inspection of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly. Then rework the aft edge liner assembly at the applicable time specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) If any sign of interference is detected: Rework the assembly before further flight.

(ii) If no sign of interference is detected: Rework the assembly within 150 flight cycles after the inspection.

(3) Perform a detailed inspection for signs of damage of the lateral roller fitting on the forward and aft cargo door frames at the fuselage. If any damage is found, replace the lateral roller fitting before further flight with a new roller fitting having the same part number, in accordance with the applicable service bulletin.

(4) Actions done before May 7, 2007, in accordance with Embraer Alert Service Bulletin 170–52–A036 or 190–52–A018, both dated March 12, 2007, are acceptable for compliance with the corresponding requirements of this AD.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Note 2: Embraer Alert Service Bulletins 170–52–A036 and 190–52–A018 refer to Embraer Service Bulletins 170–50–0006 and 190–50–0006, respectively, as additional sources of service information for the rework and roller fitting cover plate removal. Embraer Service Bulletins 170–50–0006 and 190–50–0006 are currently at Revision 01, dated March 13, 2007.

Repetitive Inspections for Damage

(i) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: Repeat the inspection specified in paragraph (h)(3) of this AD at intervals not to exceed 150 flight cycles until the terminating action specified in paragraph (k)(3) of this AD has been accomplished.

Parts Installation

(j) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: As of May 7, 2007, no person may install a roller fitting cover plate on the forward and aft cargo door frames on any airplane.

New Requirements of This AD: Actions and Compliance

(k) Unless already done, do the following actions.

(1) For Model ERJ 190–200 LR, –200 STD, and –200 IGW airplanes: As of 24 hours after the effective date of this AD, before each flight after closing the cargo doors, verify that the forward and aft cargo doors are closed flush with the fuselage skin, and that all 4 latched and locked indicators at the bottom of each door are green. Persons qualified to do this verification are mechanics and flightcrew members. If it cannot be verified that both doors are closed flush with the fuselage skin, and that all 4 latched and locked indicators at the bottom of each door are green, repair before further flight. Repeat the verification before every flight until accomplishment of the actions required by paragraph (k)(2) of this AD.

(2) For Model ERJ 190–200 LR, –200 STD, and –200 IGW airplanes: Within 10 days after the effective date of this AD, do the actions specified in paragraphs (k)(2)(i), (k)(2)(ii), and (k)(2)(iii) of this AD, in accordance with the Accomplishment Instructions of Embraer Alert Service Bulletin 190–52–A018, Revision 01, dated March 23, 2007. Repeat the inspection specified in paragraph (k)(2)(iii) of this AD at intervals not to exceed 150 flight cycles until the terminating action specified in paragraph (k)(3) of this AD has been accomplished.

(i) Remove the roller fitting cover plate on the forward and aft cargo door frames.

(ii) Perform a detailed inspection of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly. Then rework the aft edge liner assembly at the applicable time specified in paragraph (k)(2)(ii)(A) or (k)(2)(ii)(B) of this AD.

(A) *If any sign of interference is detected:* Rework the assembly before further flight.

(B) *If no sign of interference is detected:* Rework the assembly within 150 flight cycles after the inspection.

(iii) Perform a detailed inspection for signs of damage of the lateral roller fitting on the forward and aft cargo door frames at the fuselage. If any damage is found, replace the lateral roller fitting before further flight with a new roller fitting having the same part number, in accordance with Embraer Alert Service Bulletin 190–52–A018, Revision 01, dated March 23, 2007.

(3) *For all airplanes:* Within 5,000 flight cycles after the effective date of this AD, do the actions specified in paragraphs (k)(3)(i) and (k)(3)(ii) of this AD on the forward and aft cargo doors. Accomplishing the actions in this paragraph terminates the repetitive inspections required by paragraphs (i) and (k)(2) of this AD.

(i) Relocate the cargo door closed indication sensor in accordance with the Accomplishment Instructions of Embraer Service Bulletin 170–52–0041, Revision 01, dated June 13, 2008; or 190–52–0023, Revision 02, dated March 11, 2008; as applicable.

(ii) Modify the cargo door lock handle mechanism and replace the forward and aft cargo door roller fittings having part number (P/N) 170–92569–401 and 170–85452–401 with new fittings having P/N 170–92569–403 and 170–85452–403, as applicable. Do the modification in accordance with the Accomplishment Instructions of Embraer Service Bulletins 170–52–0044, dated January 18, 2008; or 190–52–0027, dated March 20, 2008; as applicable.

(4) Actions done before the effective date of this AD in accordance with Embraer

Service Bulletin 170–52–0041, dated September 6, 2007; or 190–52–0023, dated September 6, 2007, or Revision 01, dated December 6, 2007; as applicable; are acceptable for compliance with the corresponding requirements of this AD.

(5) Within 12 months after the effective date of this AD or 12 months after accomplishing the modification required by paragraph (k)(3) of this AD, whichever occurs later: Incorporate information into the maintenance program to include the operational (OPC) and functional (FNC) checks of the forward and aft cargo doors; in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Agência Nacional de Aviação Civil (or its delegated agent). Within 6,000 flight hours after doing the actions required by paragraph (k)(3) of this AD, do the OPC and FNC checks and repeat the checks thereafter at intervals not to exceed 6,000 flight hours.

Note 3: Guidance on the OPC and FNC checks specified in paragraph (k)(5) of this AD can be found in Table 1 of this AD, as applicable.

TABLE 1—OPC AND FNC GUIDANCE

Manual—	Task—	Date—
Embraer 170 Aircraft Maintenance Manual	52–31–00–710–801–A/500	July 15, 2008.
	52–31–20–720–801–A/500	July 15, 2008.
	52–32–00–710–801–A/500	July 15, 2008.
	52–32–20–720–801–A/500	July 15, 2008.
Embraer 190 Aircraft Maintenance Manual	52–31–00–710–801–A/500	July 15, 2008.
	52–31–20–720–801–A/500	July 15, 2008.
	52–32–00–710–801–A/500	July 15, 2008.
	52–32–20–720–801–A/500	July 15, 2008.

Note 4: For the purposes of this AD, a functional check (FNC) is: ''A quantitative check to determine if one or more functions of an item perform within specified limits.''

Note 5: For the purposes of this AD, an operational check (OPC) is: ''A task to determine if an item is fulfilling its intended purpose. Since it is a failure finding task, it does not require quantitative tolerances.''

FAA AD Differences

Note 6: This AD differs from the MCAI and/or service information as follows: Where the MCAI includes a compliance time of ''after accomplishment of the modification'' for revising the maintenance program for Model ERJ–170 airplanes, we have determined that a compliance time of ''within 12 months after the effective date of the AD or within 12 months after accomplishment of the modification, whichever occurs later'' is appropriate. This compliance time is equivalent to the compliance time required for Model ERJ–190 airplanes. The manufacturer and ANAC agree with this compliance time.

Other FAA AD Provisions

(l) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2848; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2007–06–53, are approved as AMOCs for the corresponding provisions of paragraph (i) of this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(m) Refer to Brazilian Airworthiness Directives 2007–03–01R1, dated June 9, 2008, and 2007–03–02R2, dated November 21, 2008; and the service information contained in Table 2 of this AD for related information.

TABLE 2—SERVICE INFORMATION

Service Bulletin	Revision	Date
Embraer Alert Service Bulletin 170–52–A036	01	March 23, 2007.
Embraer Alert Service Bulletin 190–52–A018	01	March 23, 2007.
Embraer Service Bulletin 170–52–0041	01	June 13, 2008.
Embraer Service Bulletin 170–52–0044	Original	January 18, 2008.
Embraer Service Bulletin 190–52–0023	02	March 11, 2008.
Embraer Service Bulletin 190–52–0027	Original	March 20, 2008.

Issued in Renton, Washington, on August 7, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19655 Filed 8–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 168

[Docket No. USCG–2006–23556, Formerly CGD91–202a]

RIN 1625–AA10, Formerly RIN 2115–AE56

Escort Vessels in Certain U.S. Waters

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Coast Guard is withdrawing its proposed rule concerning the extension of escort vessel requirements in place for single hulled oil tankers in Prince William Sound, Alaska, and Puget Sound, Washington, to other U.S. waters and to other types of vessels. The Coast Guard has concluded that a rulemaking of national scope, such as this, is neither necessary nor advisable given the existence of more locally oriented options for considering escort vessel requirements.

DATES: The proposed rule is withdrawn on August 18, 2009.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2006–23556 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call Lieutenant Bryson Spangler at (202) 372–1357. If you have questions on viewing material in the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

The Coast Guard has broad authority under the Ports and Waterways Safety Act (PWSA, 33 U.S.C. 1221 *et seq.*) to control vessel traffic in navigable waters of the United States. In addition, section 4116(c) of the Oil Pollution Act of 1990 (OPA 90, Pub. L. 101–380) required the Coast Guard to initiate a rulemaking ''to define those areas [including Prince William Sound, Alaska and Puget Sound, Washington] on which single hulled tankers over 5,000 gross tons transporting oil in bulk shall be escorted by at least two towing vessels * * * or other vessels considered appropriate by the Secretary.'' The present rulemaking was opened in response to the OPA 90 § 4116(c) requirement and also in order to consider escort vessel requirements under PWSA.

This rulemaking was split off from another rulemaking in 1993; for the history of the parent rulemaking see its final rule (70 FR 55728, Sep. 23, 2005). For this rulemaking, we previously published an advance notice of proposed rulemaking (ANPRM; 58 FR 25766, Apr. 27, 1993), a notice of meeting and request for comments (59 FR 65741, Dec. 21, 1994), and a notice of withdrawal and request for comments (73 FR 20232, Apr. 15, 2008). Further background information appears in the April 2008 notice.

The April 2008 notice proposed the withdrawal of this rulemaking, based on our tentative conclusion that nationwide Coast Guard action to extend statutory escort vessel requirements is not advisable, and that escort vessel requirements for waters other than Puget and Prince William Sounds, or for vessels other than single hulled oil tankers, should be imposed only after local level Coast Guard consideration of specific local needs, conditions, and available alternatives. We asked for public comment on the proposed withdrawal.

Discussion of Comments

In response to our April 2008 notice, we received 17 letters containing 55 comments. We thank those who commented for their interest.

Twelve comments concerned the need for specific action in Cook Inlet, Alaska, or other local waters. We acknowledge these comments, but restate our position that the need for escort vessels or other protective measures in specific waters should be assessed under PWSA. Therefore, requests for protective measures in specific waters should be addressed to the local Coast Guard sector commander. A list of Coast Guard sectors appears, as part of a comprehensive list of Coast Guard units, at *http://www.uscg.mil/top/units/.*

Five comments asserted that we have not satisfied our obligations under § 4116(c) of OPA 90, or that withdrawal of the rulemaking at this stage would violate OPA 90. We do not agree that further action is required under OPA 90 or that withdrawal of this rulemaking would violate that act. In 2000, the United States Court of Appeals for the District of Columbia Circuit stated that ''it is not at all obvious whether § 4116(c) actually forces the Coast Guard itself to come up with the names of, and instigate rulemaking regarding possible 'other waters,''' and held that that section ''does not create a sufficiently clear duty regarding 'other waters' to merit mandamus relief.'' *In re Bluewater Network,* 234 F.3d 1305 at 1306 (DC Cir. 2000). Nevertheless, the Coast Guard sought to comply with any possible requirement for regulatory action under § 4116(c) by initiating this rulemaking. After considering public comment on our 1993 ANPRM, we concluded in 1994 that ''there is no need to prescribe an absolute minimum of two escort vessels'' in other waters, and that ''designating any other U.S. waters for escorting requirements will be accomplished using the Coast Guard's authority under * * * PWSA, which allows greater flexibility concerning the ships to be escorted and the number of escort vessels to be required.'' 59 FR at 65743. The Coast Guard stands by its conclusion that § 4116(c) of OPA 90 requires no further consideration under this rulemaking.

Nine comments criticized our proposed reliance on local assessments under PWSA. These comments pointed to alleged flaws in the local assessment process or argued for national standards and timelines to guide local assessments, and most stated that PWSA is not an adequate substitute for continuing this rulemaking under OPA 90. Later in this document, we discuss the Coast Guard PWSA assessment process and provide links to additional information. The PWSA assessment process provides a uniform methodology that can be applied across the nation, and we are always open to considering specific ideas for improving it.

To address two specific concerns that critics of the PWSA process raised: First, the process generally allows for more public input than some commenters realize. It provides a structured way to make sure all significant local stakeholders are represented and participate. Assessment workshops are locally publicized, open to the public, and allow for public

comment. Second, it is true that PWSA assessments may not lead to immediate action, because the implementation of assessment recommendations may carry its own procedural requirements. However, those additional procedural requirements serve public purposes of their own, and compliance with those requirements within the focused context of a specific body of water may take less time than compliance on a national basis. For example, it could be quicker and easier to prepare National Environmental Policy Act documentation for a specific bay or inlet than it would be to do so for all U.S. bays or inlets. For these reasons, we conclude that the PWSA process is an adequate substitute for analysis under OPA 90.

Two comments disagreed with our notice's tentative conclusion that national scope rulemaking is neither appropriate nor beneficial, and suggested that established OPA 90 performance standards, and operational requirements under 33 CFR 168.50, provide a suitable framework for national action. We do not agree. OPA 90 mandated escort vessel protection for Puget Sound and Prince William Sound, and 33 CFR 168.40 makes 33 CFR 168.50 applicable only to those waters. As previously discussed, we determined in 1994 that there was no need to extend those requirements to other waters. In 1994, we also noted several limitations or potential problems with applying OPA 90 standards to other waters, where those standards ''may significantly increase costs without any commensurate increase in environmental protection'' and could even be counterproductive. 59 FR at 65742.

Two comments cited 46 U.S.C. 3703(a)(5) as requiring the Coast Guard to regulate vessel maneuvering and stopping ability, and other features that reduce the possibility of marine casualties, and contended that this statute clearly contemplates a nationwide rule regarding the use of escort vessels. The cited statute does not require the use of escort vessels, and is implemented in pertinent part by Coast Guard navigation safety regulations in 33 CFR Part 164.

Five comments took issue with our notice's reference to 33 CFR 1.05–20, which provides for citizen petitions for Coast Guard rulemaking. These comments said that Congress gave the Coast Guard responsibility for investigating escort vessel needs, and that it is inappropriate for the Coast Guard to shift that responsibility to the public. We do not mean to imply that 33 CFR 1.05–20 transfers any responsibilities from the Coast Guard to the public. However, it does provide a way for people to direct the Coast Guard's attention to specific issues and to hear from us on how we intend to respond. If we agree that the petition merits regulatory action, we will initiate that action, and if we do not agree, we will inform the petitioner and maintain the response in a public file open for inspection.

Three comments criticized our notice for implying that the proposed withdrawal reflects Coast Guard resource constraints, suggesting that we approach Congress for additional resources or draw on Oil Spill Liability Trust Fund money to overcome those constraints. Our notice stated that a ''nationwide risk assessment program may be a good idea but it would be very expensive and time-consuming to implement.'' However, our reasons for not pursuing such a program were broader than its expense or difficulty. Rather, we noted that a nationwide risk assessment program ''would be hard to validate, making its usefulness questionable,'' and that it would be a ''conceptual exercise'' relative to assessments of the need for ''specific resources in specific waters.'' These statements were in line with our 1994 conclusion that there was no need to continue national assessments under OPA 90 and that PWSA would be the basis for any further Coast Guard assessment of protective measures in specific waters.

Seven comments requested that, if we proceed with withdrawal, we expressly state that this action would not preempt States from imposing their own escort vessel requirements. The Coast Guard's position is that States are preempted from imposing their own escort vessel requirements in certain waters where we have either established or declined to establish special navigation or other requirements based on our assessment of the conditions in those waters. However, the withdrawal of this rulemaking, in and of itself, is not intended to have a preemptive or non-preemptive effect, one way or the other, on any particular State escort requirement, as it is not an assessment of the conditions of any specific waters.

One comment offered numerous criteria that could guide local Coast Guard units in determining which waters should have escort vessel requirements, and numerous suggestions for how local assessments should be conducted. As we discuss later in this document, our current PWSA assessment methodology has been professionally developed, tested, and refined, and provides a satisfactory uniform tool for assessing local needs and safety control measures.

Two comments called for extending escort vessel requirements to other cargos, or based on specific factors, which were discussed in those comments. These comments do not affect our conclusion that this particular rulemaking should be withdrawn, but they could have relevance in any future assessment of the needs of specific waters. If you think certain cargos or factors need to be addressed with protective measures for a specific waterway, please contact your local Coast Guard sector commander. A list of Coast Guard sectors appears, as part of a comprehensive list of Coast Guard units, at *http://www.uscg.mil/top/units/*.

One comment urged us to give shippers an early indication that further escort vessel requirements are contemplated, so that they can design multipurpose escort vessels to meet multiple regulatory requirements. As part of the rulemaking process the Coast Guard evaluates and solicits comments on the most efficient manner of implementation and would do the same with any new vessel escort requirements.

One comment criticized the proposed withdrawal as part of a disturbing Coast Guard trend to leave rulemakings unfinished and environmental and safety objectives unmet. The Coast Guard does not agree with this characterization. We will not impose new regulations without adequate evidence that they are warranted, especially if they have a national scope. In this case, we have concluded that this rulemaking should be withdrawn, and that the needs of specific waters should be assessed under PWSA. Environmental protection of local waters and the overall marine safety of those waters are best placed in the hands of local Coast Guard officials, who can best provide oversight and vigilance in these matters.

Two comments requested additional documentation of the rationale for our April 2008 notice, and one of these requested an extension of that notice's public comment period in order to provide time to review the additional documentation. There is no additional documentation of any relevance. The rationale for withdrawal of this rulemaking is fully provided in the April 2008 notice and in previous notices published under this rulemaking, and we do not think an extension of the public comment period would provide any public benefit.

One comment asked for a response to a 1995 rulemaking petition regarding

the expansion of escort vessel requirements in the western region of the Strait of Juan de Fuca, and asked for the response to take into account all relevant studies conducted since 1995. We have been unable to locate any documentation of such a petition, but will entertain a new petition submitted under 33 CFR 1.05–20. Petitions should be addressed to the Executive Secretary, Marine Safety and Security Council (CG–0943), U.S. Coast Guard, 2100 Second St., SW., Stop 7121, Washington, DC 20593–7121.

One comment from the Makah Tribal Council, an Indian Tribe, requested government-to-government consultation with the Coast Guard prior to withdrawal. That consultation took place on April 23, 2009, and is documented as Document ID USCG–2006–23556–0050.1 in the docket for this rulemaking.

One comment expressed support for our proposed withdrawal.

PWSA Assessments

Under PWSA, the principal Coast Guard tool for assessing and controlling risks in local waterways is the Ports and Waterways Safety Assessment (PAWSA). Since 1998, the Coast Guard has conducted almost 40 PAWSAs for waterways around the country, and in a typical year there is funding for three additional PAWSAs, with priority given to waterways likely to be at greatest risk.

PAWSAs employ a uniform methodology that was developed by academic experts and refined through four years of workshops involving stakeholders from industry, port authorities, and the environmental community among others. The goal, throughout, was to develop a process that could evaluate risk and work toward long term solutions, tailored to local circumstances, that is both cost effective and meets the needs of waterway users and stakeholders.

The PAWSA methodology provides a formal structure for identifying risk factors and evaluating potential mitigation measures through expert inputs. Each PAWSA is conducted in a public workshop setting that brings together local waterway users, environmentalists, public safety figures, economic experts, and other local stakeholders. The methodology supplies a weighting tool to take into account the relative expertise of each workshop participant. During the workshop, participants discuss and assign numerical ratings to the local waterway's safety risks in the following areas:

- Quality of local vessels and crews;
- Number of vessels and their interaction with each other;
- Winds, currents, and weather;
- Physical properties affecting vessel maneuverability;
- Likely immediate impacts of a waterway accident, such as a collision or hazardous material spill; and
- Possible long term vessel traffic, economic, or environmental consequences of a waterway accident.

Security risks are not included in the PAWSA risk analysis because they are analyzed separately by the Coast Guard through port vulnerability and security assessments. PAWSA workshop participants also discuss and assign numerical ratings to navigational systems, emergency response capabilities, and other measures currently in place, or that could be adopted, to control each risk.

PAWSA computer software uses input from the workshop participants to generate risk assessments in several categories, and to assess the effectiveness of current or potential control measures. Workshop participants then review the computer-generated results, and can revise their input if they feel their initial ratings produced a false picture of local conditions.

You can get more information about PAWSAs, including contact information for the Coast Guard's Office of Waterways Management PAWSA Project Officer, at *http://www.navcen.uscg.gov/mwv/projects/pawsa/PAWSA_home.htm,* or read reports on any of the PAWSAs conducted to date at *http://www.navcen.uscg.gov/mwv/projects/pawsa/PAWSA_FinalReports.htm.* If you have comments or suggestions about PAWSAs generally, contact the Project Officer. If you think a specific waterway should be the focus of a future PAWSA, contact the Project Officer, or contact the relevant Coast Guard sector commander. In your recommendation, you should address the bulleted local waterway safety risks cited earlier in this discussion, as fully and specifically as possible. A list of Coast Guard sectors, as part of a comprehensive list of Coast Guard units, can be found at *http://www.uscg.mil/top/units/.*

Withdrawal

The Coast Guard withdraws this rulemaking, which concerns the extension, to other U.S. waters and to other types of vessels, of those escort vessel requirements that apply to single hulled oil tankers in Prince William Sound, Alaska, and Puget Sound, Washington. We have concluded that a rulemaking of national scope under the authority of OPA 90 is neither necessary nor advisable given the availability of PWSA assessments of the needs, in specific local waters, for escort vessels or other protective measures.

Authority

We issue this notice of withdrawal under the authority of the Ports and Waterways Safety Act, 33 U.S.C. 1221 *et seq.,* and section 4116(c) of the Oil Pollution Act of 1990, Public Law 101–380.

Dated: August 11, 2009.

F. J. Sturm,

Acting Director, Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. E9–19705 Filed 8–17–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0294; FRL–8944–8]

Approval of Implementation Plans of Michigan: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Michigan abbreviated State Implementation Plan (SIP) submitted on July 16, 2007 and on June 10, 2009. Together, the revisions address the requirements for an abbreviated Clean Air Interstate Rule (CAIR) SIP. EPA is also providing notice that the December 20, 2007 conditional approval of the July 16, 2007 submittal automatically converted to a disapproval.

DATES: Comments must be received on or before September 17, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0294, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Deliveries are only

accepted during the regional office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The regional office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Final Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6960, *aburano.douglas@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register,** EPA is approving the State's SIP submittal as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period; therefore, any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Final Rules section of this **Federal Register.**

Dated: August 4, 2009.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E9–19467 Filed 8–17–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2008–0131; MO 9221050083–B2]

Endangered and Threatened Wildlife and Plants; Partial 90-Day Finding on a Petition To List 206 Species in the Midwest and Western United States as Threatened or Endangered with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on 38 species from a petition to list 206 species in the mountain-prairie region of the United States as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). For 9 of the 38 species, we find that the petition did not present substantial information indicating that listing may be warranted. For 29 of the 38 species, we find that the petition does present substantial scientific or commercial information indicating that listing may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the 29 species to determine if listing is warranted. To ensure that the review is comprehensive, we are soliciting scientific and commercial information regarding these 29 species.

DATES: To allow us adequate time to conduct a status review, we request that we receive information on or before October 19, 2009.

ADDRESSES: You may submit information by one of the following methods:

- *Federal rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments to Docket no. FWS–R2–ES–2008–0131.
- *U.S. Mail or hand delivery:* Public Comments Processing, Attn: FWS–R6–ES–2008–0131, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (*see* the Information Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Ann Carlson, Listing Coordinator, Mountain-Prairie Regional Ecological Services Office (see **ADDRESSES**); telephone 303–236–4264. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the 29 species for which we found that the petition provides substantial information that listing may be warranted. We request information from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the status of the species. We are seeking information regarding the species' historical and current status and distribution, their biology and ecology, ongoing conservation measures for the species and their habitats, and threats to the species or their habitats.

Please note that comments merely stating support or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1533 (b)(1)(A)) directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.'' At the conclusion of the status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act (16 U.S.C. 1533(b)(3)(B)).

You may submit your information concerning this 90-day finding or the 29 species by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation used in preparing this 90-day finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mountain-Prairie Regional Ecological Services Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that a petitioned action may be warranted. We are to base this finding on information provided in the petition. To the maximum extent practicable, we are to make the finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register.**

Our standard for ''substantial information,'' as defined in the Code of Federal Regulations at 50 CFR 424.14(b), with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.'' If we find that substantial information was presented, we are required to promptly commence a status review of the species.

In making this finding, we based our decision on information provided by the petitioner that we determined to be reliable after reviewing sources referenced in the petition and otherwise available in our files. We evaluated that information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

Petition

On July 30, 2007, we received a formal petition dated July 24, 2007, from Forest Guardians (now WildEarth Guardians) requesting that the Service: (1) Consider all full species in our Mountain Prairie Region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, proposed for listing, or candidates for listing; and (2) list each species as either endangered or threatened. The petition incorporated all analysis, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* into the petition. The petition clearly identified itself as a petition and included the identification information, as required in 50 CFR 424.14(a). We sent a letter to the petitioners, dated August 24, 2007, acknowledging receipt of the petition and stating that, based on preliminary review, we found no compelling evidence to support an emergency listing for any of the species covered by the petition.

On March 19, 2008, WildEarth Guardians filed a complaint (1:08–CV–472–CKK) indicating that the Service failed to comply with its mandatory duty to make a preliminary 90-day finding on their two multiple species petitions—one for mountain-prairie species, and one for southwest species. We subsequently published two initial 90-day findings on January 6, 2009 (74 FR 419), and February 5, 2009 (74 FR 6122). On March 13, 2009, the Service and WildEarth Guardians filed a stipulated settlement in the District of Columbia Court, agreeing that the Service would submit to the **Federal Register** a finding as to whether WildEarth Guardians' petition presents substantial information indicating that the petitioned action may be warranted for 38 mountain-prairie species by August 9, 2009. This finding meets that portion of the settlement.

On June 18, 2008, we received a petition from WildEarth Guardians, dated June 12, 2008, to emergency list 32 species under the Administrative Procedure Act (APA) and the Endangered Species Act. Of those 32 species, 11 were included in the July 24, 2007, petition to be listed on a non-emergency basis. Although the Act does not provide for a petition process for an interested person to seek to have a species emergency listed, section 4(b)(7) of the Act authorizes the Service to issue emergency regulations to temporarily list a species. In a letter dated July 25, 2008, we stated that the information provided in both the 2007 and 2008 petitions and in our files did not indicate that an emergency situation existed for any of the 11 species. The Service's decisions whether to exercise its authority to issue emergency regulations to temporarily list a species are not judicially reviewable. *See Fund for Animals* v. *Hogan,* 428 F.3d 1059 (DC Cir. 2005).

The following discussion presents our evaluation of a portion of the species included in the July 24, 2007, petition, based on information provided in the petition and our current understanding of the species.

The 2007 petition included a list of 206 species. Two species, *Cymopterus beckii* (pinnate spring-parsley) and *Camissonia gouldii* (Diamond Valley suncup), also were included in a separate petition to list 475 species in our Southwest Region that we received on June 18, 2007. We reviewed the species files for *Cymopterus beckii* and *Camissonia gouldii* under the June 18, 2007, petition, and in an initial response to the petition for 475 species included them in a 90-day finding for 270 species published on January 6, 2009 (74 FR 419), concluding that the petition did not present substantial scientific or commercial information indicating that listing of the species may be warranted.

We addressed an additional 165 species (from the petition to list 206 species) in a 90-day finding that published on February 5, 2009 (74 FR 6122), concluding that the petition did not present substantial scientific or commercial information indicating that listing of the species may be warranted.

The petitions for 206 and 475 species each included *Sphaeralcea gierischii* (Gierisch mallow). We found this species is currently a candidate species for listing and that action was initiated through a candidate assessment completed by the Southwest Region headquartered in Albuquerque, New Mexico. We have sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened (*i.e.,* it met our definition of a candidate species); however, preparation and publication of a proposed rule is precluded by higher-priority listing actions—existing candidates with listing priority numbers of 2 and additional factors such as International Union for Conservation of Nature (IUCN) rankings. The species was included in the Candidate Notice of Review that published on December 10, 2008 (73 FR 75176). The threats to *S. gierischii* are high in magnitude, because survival of the species is threatened throughout its entire range in Arizona by gypsum mining, and the two largest populations exist in areas that are being actively mined. Loss of those two populations would significantly reduce the total number of individuals throughout the range, threatening the long-term viability of the species. The threats are imminent, because they are ongoing in Arizona. Therefore, we assigned a listing priority number of 2 to this species.

Species Information

The petitioners presented two tables that collectively listed the 206 species for consideration and requested that the Service incorporate all analysis,

references, and documentation provided by NatureServe in its online database into the petition. The information presented by NatureServe (*http://www.natureserve.org/*) is found in peer-reviewed professional journal articles and is considered to be a reputable source of scientific information. We judge this source to be reliable with regard to the information it presents. However, NatureServe indicates on their Web Site that information in their database is not intended for determining whether species are warranted for listing under the Act, and we found that the information cited was limited in its usefulness for this process.

We accessed the NatureServe database on August 10, 2007. We saved hardcopies of each species' file and used this information, including references cited within these files, during our review. Therefore, all information we used from the species files in NatureServe was current to that date. All of the petitioned species were ranked by NatureServe as G1 (critically imperiled) or G1G2 (between critically imperiled and imperiled).

We reviewed all references cited in the NatureServe database species files that were available to us. Some literature cited was not readily available through known sources, and we requested these directly from the petitioner. For some species in NatureServe, there is a ''Local Programs'' link to the Web Sites of the State programs that contribute information to NatureServe. We found this ''Local Programs'' link to have additional information for very few of the 206 species. We reviewed information in references cited in NatureServe and information readily available in our files that was directly relevant to the information raised in the petition.

We have already assessed 168 of the 206 species. This petition addresses the remaining 38 species, which are listed below in Table 1.

TABLE 1—LIST OF 38 SPECIES INCLUDED IN THIS FINDING

Scientific name	Common name	Range	Group
Species for which Substantial Information was not Presented:			
Amnicola sp. 2	Washington duskysnail	ID, MT, WA	Mollusk.
Camissonia exilis	Cottonwood Spring suncup	AZ, UT	Plant.
Discus brunsoni	Lake disc	MT	Mollusk.
Frasera gypsicola	Sunnyside green-gentian	NV, UT	Plant.
Lomatium latilobum	Canyonlands lomatium	CO, UT	Plant.
Lygodesmia doloresensis	Dolores River skeletonplant	CO, UT	Plant.
Oreohelix sp. 4	Drummond mountainsnail	MT	Mollusk.
Oreohelix amariradix	Bitterroot mountainsnail	MT	Mollusk.
Oreohelix carinifera	Keeled mountainsnail	MT	Mollusk.
Species for which Substantial Information was Presented:			
Abronia ammophila	Yellowstone sand verbena	WY	Plant.
Agrostis rossiae	Ross' bentgrass	WY	Plant.
Astragalus hamiltonii	Hamilton milkvetch	CO, UT	Plant.
Astragalus iselyi	Isely milkvetch	UT	Plant.
Astragalus microcymbus	Skiff milkvetch	CO	Plant.
Astragalus proimanthus	Precocious milkvetch	WY	Plant.
Astragalus sabulosus	Cisco milkvetch	UT	Plant.
Astragalus schmolliae	Schmoll milkvetch	CO	Plant.
Boechera (Arabis) pusilla	Fremont County rockcress	WY	Plant.
Catinella gelida	Frigid ambersnail	IA, IL, IN, KY (Extirpated), MI, MO, MS, OH, SD, WI.	Mollusk.
Corispermum navicula	Boat-shaped bugseed	CO	Plant.
Cryptantha semiglabra	Pine Springs cryptantha	AZ, UT	Plant.
Draba weberi	Weber whitlowgrass	CO	Plant.
Eriogonum brandegeei	Brandegee's wild buckwheat	CO	Plant.
Eriogonum soredium	Frisco buckwheat	UT	Plant.
Ironoquia plattensis	Platte River caddisfly	NE	Invertebrate.
Lednia tumana	Meltwater lednian stonefly	CAN: MB USA: MT, ND, WA	Invertebrate.
Lepidium ostleri	Ostler's peppergrass	UT	Plant.
Lepidomeda copei	Northern leatherside Chub	ID, NV, UT, WY	Fish.
Lesquerella navajoensis	(No common name)	AZ, NM, NN, UT	Plant.
Oreohelix sp. 3	Bearmouth mountainsnail	MT	Mollusk.
Oreohelix sp. 31	Byrne Resort mountainsnail	MT	Mollusk.
Penstemon flowersii	Flowers penstemon	UT	Plant.
Penstemon gibbensii	Gibben's beardtongue	CO, UT, WY	Plant.
Pyrgulopsis anguina	Longitudinal gland pyrg	NV, UT	Mollusk.
Pyrgulopsis hamlinensis	Hamlin Valley pyrg	UT	Mollusk.
Pyrgulopsis saxatilis	Sub-globose snake pyrg	UT	Mollusk.
Sisyrinchium sarmentosum	Pale blue-eyed grass	ND, OR, WA	Plant.
Trifolium friscanum	Frisco clover	UT	Plant.

Five-Factor Evaluation

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species, subspecies, or distinct population segment of vertebrate taxa may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for

commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above factors, singly or in combination.

Under the Act, a threatened species is defined as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. An endangered species is defined as a species that is in danger of extinction throughout all or a significant portion of its range. In making this 90-day finding, we evaluated whether information on each of the 38 species, as presented in the petition and other information in our files is substantial, indicating that listing any of the 38 species as threatened or endangered may be warranted. Our evaluation is presented below.

We separately addressed each species with respect to the five factors described in section 4(a)(1) of the Act. For each species, we fully evaluated all information available to us through the NatureServe website, and in our files. Because so little information was available in our files for these, typically rare, species, we did not distinguish between information obtained from the website and our files.

Species for Which Substantial Information Was Not Presented

Amnicola sp. 2 (Washington Duskysnail)

Currently, three locations of the Washington duskysnail exist –two in Washington and one in Montana. Washington duskysnail (*Amnicola sp. 2*) may be the same as a species included in a separate petition to list 32 species of mollusks, also called Washington duskysnail (*Lyogyrus sp.* 2). The historical range of *Amnicola sp. 2* is hypothesized to include a larger area; according to Frest and Johannes (1995, p. 158), the species is declining in populations and number of individuals; however, this information is speculative because the authors based their analysis of the species' historical range on geographic characteristics, not on actual survey data.

Factor A: According to the NatureServe database, the species' survival is thought to be affected by poor water quality associated with residential development, grazing, logging, and intentional aquatic organism control activities and fish reintroductions that occur in potential habitat or existing areas of occurrence. These activities, which potentially adversely affect water quality are general, and no quantification, verification, or subsequent effect to the species was presented.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing of Washington duskysnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range due to activities affecting water quality.

Cammissonia exilis (Cottonwood Spring Suncup)

Camissonia exilis is endemic to gypsiferous soils in Kane County, Utah, and Coconino and Mohave Counties, Arizona. The species is a narrow endemic, which may affect its ability to persist when faced with habitat reductions. Not much is known about this species.

Factor A: According to the NatureServe database, off-road vehicle (ORV) use and woodcutting are known to occur at some sites occupied by the species; however, no quantification, verification, or effect to the species was presented.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing of *Camissonia exilis* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range due to ORV use or woodcutting.

Discus brunsoni (Lake Disc)

The lake disc is a mollusk found only on the north shore of McDonald Lake in the Mission Range, Lake County, Montana. The species is a highly localized endemic. Limited survey information exists, and population trends are unknown. The species has been consistently present at the location from 1948 to 1997 (Hendricks 2003a, p. 10). Although extensive surveys have been performed, only 1 location of approximately 100 by 300 yards (91 by 274 meters) in size is known (Brunson 1956, p. 17; Hendricks 2003a, pp. 9–11). As additional information is gathered on the requirements of the species, more occupied locations may be determined; however, the species is difficult to detect even when present and with significant survey effort (Brunson 1956, entire; Hendricks 2003b, p. 10).

Factor A: Fire and subsequent talus destabilization above and below the occupancy site of this species could threaten its habitat (Frest and Johannes 1995, p. 98), but substantial information on these potential threats was not presented. Much of the Mission Range has been logged, or is slated for logging, but this potential threat likely does not affect the species because it is associated with loose rock talus slopes that support lichens and mosses (Brunson 1956, p. 17), and low canopy cover but not trees (Hendricks 2003b p. 9). Other snail species are found in duff at the sides of talus slides, but the lake disc has not been found in duff (Hendricks 2003a, p. 5). Livestock generally avoid unstable rocky slopes and, therefore, the species is not likely to be affected by them (Hendricks 2003a, p. 5). A recreation trail exists at the site (Hendricks 2003a, p. 11), but effects related to it have not been documented or linked to the species.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from the factors.

Factor E: The species has had a limited geographic range since 1948. However, no information was presented either in NatureServe or the petition indicating that a restricted range may be a threat to the species.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing of *Discus brunsoni* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range due to fire, talus destabilization, logging, livestock, recreational use, or due to the species' restricted range.

Frasera gypsicola (Sunnyside Green-Gentian)

Frasera gypsicola grows on white calcareous barrens and Pleistocene spring-mounds in Millard County, Utah, and Nye and White Counties, Nevada. The White River Valley of Nevada contains 9 previously known sites (Smith 2000, p. 8) and 17 newly discovered sites (Forbis 2007, pp. 2–3). Populations include approximately 69,000 individuals on 321 hectares (ha) (793 acres (ac)) (Smith 1994, p. 8). The size of the Utah population is unknown,

but considered to be much smaller (England pers. comm. 2008).

Factor A: Potential threats include livestock trampling, road widening, seismic exploration, juniper cutting, and agricultural or ORV use (Smith 2000, p. 14). However, no evidence was presented to indicate that any of these activities currently pose a threat to any of the known populations (Smith 2000, pp. 14–15).

Factors B and C: No information was presented in the petition concerning threats to this species from the factors.

Factor D: The species is protected by the State of Nevada, and is managed by the Bureau of Land Management (BLM) as a sensitive species. Two Areas of Critical Environmental Concern have been designated that include substantial habitat for the species (Forbis 2007, p. 2). Neither the petition nor NatureServe present any information concerning the adequacy of this designation as a regulatory mechanism.

Factor E: The species may be sensitive to climate-change-induced drought and resulting habitat changes (Smith 2000, p. 15); however, no information was presented in the petition or exists in our files to verify this.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing of *Frasera gypsicola* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from livestock trampling, road widening, seismic exploration, juniper cutting, and agricultural or ORV use; due to the inadequacy of existing regulatory mechanisms; or due to other natural or manmade factors affecting its continued existence.

Lomatium latilobum (Canyonlands Lomatium)

Lomatium latilobum is endemic to sand substrates at low elevations in Grand and San Juan Counties, Utah, and Mesa County, Colorado. There are 4,000 plants in 14 occurrences in Utah (Franklin 1995, appendix C) and 1,825 plants in 5 occurrences in Colorado (Colorado Natural Heritage Program 2008a, p. 1).

Factor A: According to the NatureServe database, potential threats to the species include ORV use, cattle grazing, hikers, and mountain bikes, but no quantification, verification, or effects to the species were presented.

Factors B and C: No information was presented in the petition concerning threats to this species from the factors.

Factor D: The species is listed as sensitive by the National Park Service, U.S. Forest Service, and BLM. Neither the petition nor NatureServe present any information concerning the adequacy of this designation as a regulatory mechanism.

Factor E: No information was presented in the petition concerning threats to this species from the factor.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing of *Lomatium latilobum* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from ORV use, cattle grazing, hikers, or mountain bikes; or due to the inadequacy of existing regulatory mechanisms.

Lygodesmia doloresensis (Dolores River Skeletonplant)

Lygodesmia doloresensis is a narrow endemic limited to the Dolores River Canyon in Grand County, Utah, and Mesa and San Miguel Counties in Colorado, and one location outside the Dolores River Canyon in Rabbit Valley, Colorado. There are 17 known occurrences; 12 of these are in Colorado, although 2 are considered historical because they have not been seen in over 20 years (Colorado Natural Heritage Program 2008b, p. 21). In Colorado, population estimates are available for only 6 of the 12 occurrences, totaling 2,580 plants (Colorado Natural Heritage Program 2008b, p. 21). The remaining occurrences occur along the Dolores River in Utah, near the Colorado border. The taxonomy of *L. doloresensis* is currently being reviewed (Tomb 1980, pp. 48–50; Welsh *et al.* 2003, pp. 210–211).

Factor A: According to the NatureServe database, potential threats include livestock grazing, road maintenance, and nonnative plants, but no quantification, verification, or effect to the species was presented.

Factors B and C: No information was presented in the petition concerning threats to this species from the factors.

Factor D: The species is listed as sensitive by BLM. Neither the petition nor NatureServe present any information concerning the adequacy of this designation as a regulatory mechanism.

Factor E: No information was presented in the petition concerning threats to this species from the factor.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing of *Lygodesmia doloresensis* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from livestock grazing, road maintenance, or nonnative plants; or due to the inadequacy of existing regulatory mechanisms.

Oreohelix sp. 4 (Drummond Mountainsnail)

The Drummond mountainsnail is an extremely rare, local endemic with one small site known to persist, and an uncertain historical distribution in Granite and Powell Counties, Montana. Potentially, additional sites are occupied. According to Frest and Johannes (1995, p. 116), the population trend is downward in number of sites and individuals based on extirpation in previously-occupied areas; however, this information is somewhat speculative because it is difficult to survey for snails—they tend to be cyclic, depending on weather and other natural factors.

Factor A: According to the NatureServe database, human activities such as logging, highway construction, roadside spraying, and grazing potentially cause population declines, but no quantification, verification, or effect to the species was presented.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from the factors.

Factor E: The species has a limited geographic range. However, no information was presented either in NatureServe or the petition indicating that habitat disturbance caused by stochastic events, exacerbated by small population sizes and a restricted range, may be a threat to the species.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing of the Drummond mountainsnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from logging, highway construction, roadside spraying, or grazing.

Oreohelix amariradix (Bitterroot Mountainsnail)

The Bitterroot mountainsnail is a local endemic with at least two known occurrences in the Lolo Creek drainage in Missoula County, Montana. There appears to be inconsistency in population and location information.

Errors in locations and species identification (confusion with other *Oreohelix* species) cited in previous reports bring into question range, threat, and population trend information (Hendricks 2003a, pp. 21–22). According to Frest and Johannes (1995, p. 105), the species is possibly declining based on absolute numbers, number of known and potential sites, and known habitat loss; however, this information is speculative due to past misidentifications.

Factor A: According to the NatureServe database, much of the Bitterroot Mountains have been logged, followed by intensified grazing. Roadside spraying for weed control could affect the species. Portions of the Lolo Pass and lower Lolo Creek area were subject to fires in 1991 and 1993. Highway improvements resulted in removal of extensive portions of the taluses in the Lolo Creek drainage. However, no evidence exists to indicate that any of these activities currently pose a threat to any of the known populations.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing of the Bitterroot mountainsnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from logging, grazing, roadside spraying, fires, or highway improvements.

Oreohelix carinifera (Keeled Mountainsnail)

The keeled mountainsnail persists in a portion of its type locality (area where the species was first found and that is used to define the species' habitat). Four known sites exist near the Clark Fork River in Powell County, Montana, including a portion of the type locality. The species has been extirpated over parts of its range (Frest and Johannes 1995, p. 105), although shell remains can still be found, suggesting recent population declines (Frest and Johannes 1995, p. 106). Limited survey information or effort exists. No published estimates of population size or relative abundance exist.

Factor A: The type locality has been reduced by highway and urban encroachment due to the expansion of the City of Garrison, and additional threats cited as potentially affecting the species include grazing, logging, and road construction and maintenance (Frest and Johannes 1995, pp. 105–106; Hendricks 2003a, p. 26). However, no evidence exists to indicate that any of these activities currently pose a threat to any of the known populations or may do so in the future.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from the factors.

Factor E: Factor A threats could be exacerbated by recent drought. The species' occupied and potential habitat and the type locality colony have been reduced (Frest and Johannes 1995, pp. 105–106; Hendricks 2003a, p. 26). However, neither NatureServe nor the petition presented any information indicating that this is a threat.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing of the keeled mountainsnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from highway and urban encroachment, grazing, logging, or road construction; or other natural or manmade factors affecting its continued existence.

Species for Which Substantial Information Was Presented

Abronia ammophila (Yellowstone Sand Verbena)

Abronia ammophila is endemic to Yellowstone National Park (Fertig 2000a, p. 1; Whipple 2002, p. 257). The one known population consists of three locations along Yellowstone Lake (Fertig 2000a, p. 1). Habitat for this species consists of open, sandy, and sparsely vegetated shorelines, with the habitat likely maintained by wave action or erosion (Fertig 2000a, p. 1; Whipple 2002, p. 256). In 1998, the total population was conservatively estimated at 8,325 plants, with 96 percent of them in 1 location (Fertig 2000a. p. 2). Trend data are lacking (Fertig 1997, unpubl. data), but the plant has been extirpated from at least one other known location as a result of human trampling associated with recreation (Fertig 1996, unpubl. data).

Factor A: Yellowstone Lake is a high-use recreational area. Human impacts to the sandy habitats may pose a threat to the species (Whipple 2002, p. 267).

Factors B, C, and D: No information was presented in the petition concerning threats to this species from the factors.

Factor E: The references within the NatureServe database indicated that habitat- disturbance caused by stochastic events, exacerbated by small population sizes and a restricted range, may be a threat to the species (Fertig 2000a, p. 1; Whipple 2002, p. 260).

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Abronia ammophila* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from recreational impacts. The possible threats to the species may be exacerbated by its small population size and a restricted range.

Agrostis rossiae (Ross' bentgrass)

Agrostis rossiae is endemic to the Upper Geyser Basin of Yellowstone National Park (Dorn 1980, p. 59; Clark *et al.* 1989, p. 8), where four known populations exist (Fertig *et al.* 1994, unpaginated). The species occurs in warm soils around hot springs and geysers (Fertig *et al.* 1994, unpaginated; Fertig 2000b, p. 2). In 1995, the total population was estimated at 5,000 to 7,500 individuals (Fertig 2000b, p. 2). However, the ephemeral nature of the thermal habitats occupied by this species may result in rapid population fluctuation, making estimates difficult (Fertig 2000b, p. 2).

Factor A: Park visitor activity, through trampling, is cited as a threat to the species (Fertig 2000b, p. 2). In addition, invasion of *Agrostis scabra* (rough bentgrass), which may be facilitated by park visitors, may be reducing the distribution of the species through displacement (Fertig 2000b, p. 2).

Factors B, C, and D: No information was presented in the petition concerning threats to this species from the factors.

Factor E: The changing thermal activity in occupied areas may affect habitat suitability for the species; one colony in Midway Geyser Basin was extirpated in the 1980s, likely due to a change in soil temperature resulting from a change in geyser activity (Fertig 2000b, p. 2). Small population sizes within a very restricted range make *A. rossiae* vulnerable to stochastic extinction events (Dorn 1980, p. 59).

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Agrostis rossiae* may be warranted due to the present or threatened destruction, modification, or curtailment of its

habitat or range resulting from park visitation and competition from invasive species; and due to other natural or manmade factors affecting its continued existence resulting from thermal activity.

Astragalus hamiltonii (Hamilton milkvetch)

Astragalus hamiltonii is endemic to low-elevation clay soils in Colorado and Uintah County, Utah, where 10 element occurrences exist. Only one of these element occurrences exists in Colorado. Element occurrences are part of scientific methodology established by Natural Heritage programs, and are the spatial representation of a species population as documented through voucher specimens or other methods. Population estimates are 10,000 to 15,000 individuals (Colorado Natural Heritage Program 2008c, p. 1).

Factor A: Energy exploration and development are planned, and can impact the landscape where *Astragalus hamiltonii* exists (Neese and Smith 1982; Heil and Melton 1995; BLM 2008, pp. 4–239 to 4–245). Oil and gas geophysical exploration usually involves either drilling holes and detonating explosives, or using a vibrating pad that is driven across an area using heavy vehicles. The extent of impact from either exploration method is unknown, but the vibrations and potential soil impacts may impact habitat and any species in the area. Oil and gas development involves staging a drilling rig, setting up additional equipment, and building roads to access each site, which may fragment the species' habitat. Similarly, soil disturbance occurs in oil and gas fields and would impact the habitat that lies within the footprint of well pads and roads, and areas disturbed during the development of that infrastructure. Any soil that is moved may have a direct impact on *A. hamiltonii* individuals that are present. Once a rig is in place, the drilling process creates vibrations that may impact habitat and any plants in the area. Once a well has been drilled and is producing, energy companies make regular trips to well pads to monitor production, conduct maintenance, or collect extracted resources. These regular trips may disturb *A. hamiltonii* plants present at or near well pads and roads. The introduction and spread of nonnative plants may result from energy development activities, and this would negatively impact *A. hamiltonii.* Over 90 percent of the species' population is associated with surface mineable deposits of the Little Water, Spring Hollow, and Cow Wash Tar Sand deposits (BLM 2008a, pp. 3–50, 3–174; Neese and Smith 1982; Heil and Melton 1995; BLM 2008, pp. 4–239 to 4–245). ORV use and nonnative plants are potential threats to the species (Heil and Melton 1995, p. 16).

Factor B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Astragalus hamiltonii* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from energy exploration and development.

Astragalus iselyi (Isely milkvetch)

Astragalus iselyi is endemic to low-elevation clay soils in Grand and San Juan Counties in southeastern Utah. The species has a narrow range and a small population estimated at approximately 2,500 individuals.

Factor A: Uranium mining was once a threat, and uranium mining is again proposed for the area and is a potential threat to the existing population (Franklin 2003 pp. 1, 2, 35, 46). ORV use occurs within sites occupied by the species and is a potential threat (Hreha 1982, pp. 16–17; Franklin 2003, pp. 1, 2, 9, 37; Heil *et al.* 1991, p. 9; Thompson 1987, p. 3). The species' narrow range and small population size renders it vulnerable to any habitat disturbing activity (Franklin 2003, pp. 1, 2).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Astragalus iselyi* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from uranium mining and possibly ORV use within the occupied sites.

Astragalus microcymbus (Skiff milkvetch)

Astragalus microcymbus exists in 4 element occurrences within a range of about 24 kilometers (km) (15 miles (mi)) that includes an estimated 10,322 individuals (Colorado Natural Heritage Program 2008d, pp. 4–5). Its habitat is found mainly on Federal land in a BLM Area of Critical Environmental Concern, and in a Colorado Natural Area. A 1994 not-substantial finding on a petition to list this species indicated that drought and herbivory could not be clearly shown to present a substantial threat to the species.

However, four demographic monitoring plots show an overall decline in numbers. The decline occurred from 1995 to 2002, and then a relatively stable trend occurred from 2003 until 2007 (Denver Botanic Gardens 2007, p. 4). The cause of 1995 to 2002 decline is unknown but may have been due to herbivory (Denver Botanic Gardens 2007, p. 7).

Factors A, C, and E: A population viability analysis conducted in 2007 predicted a loss of all four monitored populations by 2030 (Denver Botanic Gardens, p. 7); the reasons for this predicted decline are undocumented, but potentially include lack of precipitation, herbivory (primarily from rabbits), and episodic fruit production (Denver Botanic Gardens, p. 7). ORV use occurs within occupied habitat and could negatively impact habitat of *A. microcymbus* (Colorado Natural Heritage Program 2008d, p. 3).

Factors B and D: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Astragalus microcymbus* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from ORV use; or due to other natural or manmade factors affecting its continued existence resulting from drought.

Astragalus proimanthus (precocious milkvetch)

Astragalus proimanthus is restricted to the bluffs of the Henry's Fork River near McKinnon, Sweetwater County, Wyoming (Roberts 1977, p. 63; WYNDD 2001, p. 2). The species' global distribution is limited to less than 130 ha (320 ac) on BLM land (WYNDD 2001, pp. 2, 3). This milkvetch occurs in plant communities on rocky clay and shale soils along rims, bluffs, and rocky ridges (Fertig *et al.* 1994, unpaginated; WYNDD 2001, p. 2). In 2000, the entire population was estimated at 10,500 to 13,000 individuals, a reduction from estimates in the 1980s of 22,000 to 40,000 individuals (WYNDD 2001, p. 3); however, trend data are inconsistent between monitoring plots (WYNDD 2001, p. 3).

Factor A: Purported threats to this species include road construction, ORV

use, oil and gas exploration and development, garbage dumps, livestock grazing, and range improvement projects (WYNDD 2001, p. 3). While the impacts of these threats were not quantified, the species is located in an area incurring substantial energy development (Fertig and Welp 2001, p. 16). Impacts from energy development to *Astraglaus proimanthus* are the same as shown under Factor A analysis for *Astragalus hamiltonii* above; activities are the same and would have the same effect on each plant species. These threats exist within the habitat of *A. proimanthus,* and are acting on the species to some degree.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Astragalus proimanthus* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from energy exploration and development.

Astragalus sabulosus (Cisco milkvetch)

Astragalus sabulosus is a narrow endemic found in five locations in Grand County, Utah, that occur in a total area of approximately 320 ha (800 ac) (Atwood 1995, pp. 3, 4; Franklin 1988, p. 5). The species' population size is highly variable from year to year depending, presumably, on winter and spring precipitation. The total population is an estimated 25,000 individuals (Atwood 1995, pp. 5–6).

Factor A: Potential threats to the species include ORV use, oil and gas development, uranium mining, and natural gas development (Atwood 1995, pp. 7–9). Energy exploration and development and mining are planned in the population area, and can impact the landscape where the species exists (Atwood 1995, pp. 7–9). Impacts from energy development to *Astraglaus sabulosus* are the same as shown under Factor A analysis for *Astragalus hamiltonii* above; activities are the same and would have the same effect on each plant species. These threats exist within the habitat of *A. sabulosus,* and are acting on the species to some degree.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Astragalus sabulosus* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from energy exploration and development.

Astragalus schmolliae (Schmoll milkvetch)

Astragalus schmolliae is known only from Chapin Mesa in Mesa Verde National Park (MVNP) and the Ute Mountain Ute Reservation in Montezuma County, Colorado. The 6 element occurrences include roughly 294,499 individuals, all of which are in MVNP (Colorado Natural Heritage Program 2008e, pp. 8–9). Populations are likely to occur on the Ute Mountain Ute Reservation, but no survey data exist from this location.

Factor A: A potential threat to the species is the invasion of nonnative species into burned areas it occupies. *Carduus nutans* (musk thistle) is particularly invasive in burned areas of southern MVNP, and has been observed invading areas occupied by *A. schmolliae* (summarized in Anderson 2004, p. 61). *Bromus tectorum* (cheatgrass) also is invading occupied burned areas (Anderson 2004, pp. 60–61). The Chapin 5 fire in 1996, and the Long Mesa Fire in 2002, impacted a large portion of the occurrences in MVNP. Burning may not have significantly impacted plant mortality, but long-term impacts of fire, such as nonnative invasion, are likely to cause a decline in populations (Anderson 2004, pp. 60–61). Data on the species' response to nonnative invasions since 2006 are not readily available. Visitor impacts to the species within MVNP are localized and minimal, limited to trampling of an occasional plant growing adjacent to a trail or road (Anderson 2004, p. 72). Outside MVNP boundaries, threats from road construction and grazing may exist (O'Kane 1988, p. 444).

Factors B, C, and D: No information was presented in the petition concerning threats to this species from the factors.

Factor E: A. schmolliae has declined 39 percent from 2001–2003; the decline was attributed to drought (Anderson 2004, p. 37 and Table 5).

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Astragalus schmolliae* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from impacts of fire and nonnative invasions, and possibly road construction and grazing; and due to other natural or manmade factors affecting its continued existence resulting from drought.

Boechera (formerly Arabis) pusilla (Fremont County rockcress)

Boechera pusilla is known from one location in the southern Wind River Range, Fremont County, Wyoming (Fertig 2000c; p. 1; Heidel 2005, p. 6). The genus was changed from *Arabis* to *Boechera* in 2002 (Heidel 2005, p. 1). Its habitat consists of crevices and sparsely vegetated granitic soils in granite-pegmatite outcrops, at an elevation of 2,438 to 2,469 meters (8,000 to 8,100 feet) (Fertig 2000c, p. 1; Heidel 2005, pp. 8–9). Population estimates have varied from 800 to 1,000 individuals in 1988, to 600 in 1990, to 100 to 150 plants in 2003 (Heidel 2005, p. 14). Occupied habitat is limited to 2.4 to 6.5 ha (6 to 16 ac) (Dorn 1990, p. 8; Heidel 2005, p. 15), entirely on BLM land. The Service previously identified *B. pusilla* as a candidate species for listing as endangered in 1992 due to small population numbers, restricted range, recreational activities, and existence of six mining claims within the species' habitats. Due to conservation measures implemented by the BLM, *B. pusilla* was withdrawn from candidate status in 1999. It is currently unclear whether conservation measures are adequate to protect the species.

Factor A: ORV use occurs in the habitat of this species, and is likely affecting the species to some extent (Dorn 1990, p. 11; Fertig 2000c, p. 2; Heidel 2005, p. 17). Mining historically occurred in the area, but it is not clear if mining directly affected this species (Heidel 2005, p. 17).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Boechera pusilla* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from ORV use.

Catinella gelida (Frigid ambersnail)

The Frigid ambersnail is known from 14 sites in Iowa (Frest 1991, p. 17), 12 sites in the Black Hills of South Dakota (Frest and Johannes 2002, p. 74), and 19 sites in Wisconsin (Nekola, 2003, p. 8). According to the NatureServe database,

the species is possibly extirpated in Missouri, Michigan, Indiana, Ohio, and Mississippi, and is presumed extirpated in Kentucky. The Frigid ambersnail could be a difficult species to sample because it is present in low densities, and is typically located 3 to 15 centimeters (1 to 6 inches) beneath the talus field surface (Frest 1991, p. 16). While information presented in the petition was not substantial, we have sufficient information in our files indicating that threats are impacting the Frigid ambersnail (Ostlie 2009, pp. 49 and 50). As such, we have already initiated a status review on several mollusk species, including this one.

Factor A: The species may be found near roads, although this could be an artifact of survey bias, and in areas subject to livestock grazing and logging disturbances (Frest and Johannes 1993, p. 53; Frest and Johannes 2002, p. 73). Populations are small at all Iowa sites making the species more vulnerable to current threats of human and livestock trampling, and landslides (Frest 1991, p. 16; Frest and Johannes 1993, p. 53; Frest and Johannes 2002, p. 73). Wisconsin sites could be disturbed by development in the future (Nekola 2003, p. 21), but this threat is currently unsubstantiated. Known South Dakota sites are located near highways and roads, and most are subject to livestock trampling and effects of timber harvest (Frest and Johannes 2002, p. 73).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

The petition did not present substantial information regarding the presence of the threats identified above. However, our files contain substantial information indicating that the petitioned action may be warranted. Generally, land snail individuals and colonies are vulnerable to land-use activities due to their small body size and specific habitat requirements. The species is State-listed as endangered in Iowa, and as a Species of Special Concern in Wisconsin. Based on our identification of likely threats, and indications that they are likely impacting the species to some degree, we have determined that substantial information exists to indicate that listing of Frigid ambersnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from the effects from roads, livestock trampling, and logging disturbances.

Corispermum navicula (boat-shaped bugseed)

According to the NatureServe database, the taxonomy of *Corispermum navicula* is currently being questioned. The only two element occurrences are recorded in Jackson County, Colorado, and include an unknown number of plants on two active sand dune complexes covering about 15.5 km^2 (6 mi^2); total occupied habitat is about 173 ha (427 ac) (Colorado Natural Heritage Program 2008f, p. 12).

Factor A: Heavy ORV use is allowed on one of the two dune complexes, and has negatively impacted the species by disturbing the habitat and destroying plants (Colorado Natural Heritage Program 2008f, p. 12).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Corispermum navicula* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from ORV use.

Cryptantha semiglabra (Pipe Springs cryptantha)

Cryptantha semiglabra is endemic to clay soils in Washington County, Utah, and Coconino and Mohave Counties, Arizona. No population data are currently available.

Factor A: According to the NatureServe database, all populations of this species exist within 11 km (7 mi) of Fredonia, Arizona, which is undergoing expansion. As a result, *C. semiglabra* may be facing threats resulting from development, but this potential threat has not been adequately identified by any source. The habitat of the species is subject to disturbance from garbage dumping, ORV use, and trampling (AGFD 2004, p. 3). No information was available concerning the status of this species in Utah.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Cryptantha semiglabra* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from livestock grazing and ORV use.

Draba weberi (Weber whitlowgrass)

One occurrence of *Draba weberi* was recorded in 1969, in Summit County, Colorado, and this remains the only known location. The number of plants appears to have diminished from about 100 to 20 or 30 between the 1980s and 2006 (Decker 2006, p. 3).

Factor A: The plants are found in shallow rock crevices easily accessed from a parking lot that is a popular point of access for climbers, hikers, and backcountry skiers (Decker 2006, p. 20); this level of recreational activity is likely to result in trampling. The population depends on water flowing from an outflow pipe below a dam that enters a relatively natural creek bed; under most circumstances, water flows from the outlet pipe into the stream channel (Decker 2006, p. 20). A municipal water company owns the property; road and dam construction and maintenance are potential threats to the species (Decker 2006, p. 7).

Factors B and C: No information was presented in the petition concerning threats to this species from the factors.

Factor D: The dam property owners are aware of the plants and have no plans that would affect the habitat, but no conservation plans or agreements have been developed; therefore, the water flowing to the creek bed is not reliable (Decker 2006, pp. 7, 20).

Factor E: No information was presented in the petition concerning threats to this species from the factor.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Draba weberi* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from recreational activities, and possibly activities related to road construction and dam maintenance.

Eriogonum brandegeei (Brandegee's wild buckwheat)

Eight occurrences of *Eriogonum brandegeei* are currently considered extant, with an additional three considered historical because they have not been seen in over 20 years (Colorado Natural Heritage Program 2008g, p. 15). The habitat consists of barren outcrops of white to grayish bentonite soils in Fremont and Chaffee Counties, Colorado. The 6 occurrences for which we have plant estimates total 33,465 individuals (Colorado Natural Heritage Program 2008g, p. 15), but some

observer estimates have placed this number much higher, up to several million plants (Anderson 2006, pp. 3, 11). The species was made a candidate in 1993, but removed from candidate status in 1996 (61 FR 7460) as a result of additional information collected from survey work (Anderson 2006, p. 11). A conservation assessment was completed for the species in 2006 by the Colorado Natural Heritage Program (Anderson 2006, entire). Population estimates in the millions are noted in the conservation assessment, and in our removal of the species from candidate status, but we lack survey documentation of these higher population estimates.

Factor A: ORV and other recreational uses threaten some occurrences of *Eriogonum brandegeei,* and curtailment of these activities in plant occurrences would likely provide the greatest conservation benefit to the species (Anderson 2006, p. 3). Residential and commercial development has encroached on one of the healthiest occurrences, and could affect most of the species' range in the future; road construction related to increased development creates an additional threat to its habitat (Anderson 2006, p. 37). According to the NatureServe database, timber thinning and extraction is expected to cause direct mortality of plants, erosion, and invasion of nonnative plants; mining and oil and gas development are potential activities in this area, but the possible effects have not been assessed; bentonite mining resulted in habitat destruction in the past, but is not occurring now. Protection of plants is not considered prior to right-of-way maintenance because rights-of-way are outside the area assessed for project work; however, this activity affects a small portion of the total population (Anderson 2006, p. 39). Grazing is a small threat, and invasive nonnative species pose a high but undocumented threat (Anderson 2006, p. 39).

Factors B and C: No information was presented in the petition concerning threats to this species from the factor.

Factor D: Four of the eight occurrences are partially within two BLM Areas of Critical Environmental Concern that also are State Natural Areas. Neither the petition nor NatureServe present any information concerning the adequacy of these designations as a regulatory mechanism. Some ORV route restrictions apply in these areas, but no restrictions apply to the remaining habitat, and therefore ORV use poses a potential threat to the species and its habitat.

Factor E: No information was presented in the petition concerning threats to this species from the factor.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Eriogonum brandegeei* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from recreational activities, ORV use, development, and road construction; and due to the inadequacy of existing regulatory mechanisms related to ORV use.

Eriogonum soredium (Frisco buckwheat)

Eriogonum soredium is a narrow endemic with small populations (Evenden 1998, p. 5). The three element occurrences are restricted to limestone outcrops on Grampian Hill in Beaver County, Utah (Evenden 1998, appendix C). Estimates of the area of occupied habitat of the species range from 70 ha (170 ac) (Evenden 1998, appendix C) to 160 ha (400 ac) (Kass 1992, pp. 7–8). Estimates of the species' total population are 2,000 individuals (Kass 1992, p. 8) to approximately 30,000 individuals (Evenden 1998, appendix C). These numbers are only estimates because approximately 90 percent of the species' habitat is on private land, and access to these areas to survey for the plant is limited.

Factor A: Mineralized limestone substrates that sustain the species were subject to habitat destruction from precious metals mining. Over 90 percent of the species' habitat is located on lands having private, patented mining claims (Evenden 1998 p. 9; Kass 1992, p. 9). This high-value substrate on private lands to which we have no access is likely to be impacted by continued mining, and the future of *E. soredium* on those lands is tenuous. A small portion of the species' habitat may exist on adjacent BLM land; however, we currently have no information on the number of individuals or the magnitude of threats to the species on that land.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Eriogonum soredium* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from mining activities.

Ironoquia plattensis (Platte River caddisfly)

The Platte River caddisfly is endemic to an approximately 75-km (46-mi) segment of the central Platte River that extends from approximately Gibbon, Buffalo, and Kearney Counties, Nebraska, to Central City, Merrick County, Nebraska, comprising approximately 63,940 ha (158,000 ac) (Goldowitz 2004, p. 4). One population has likely been lost (Reins and Hoback 2008, p. 1). The species inhabits intermittent wetland habitats that are associated with the central Platte River. Intermittent wetland hydrology is affected by precipitation, periodic flooding, and groundwater levels as influenced by the nearby Platte River. Intermittent wetlands used by the Platte River caddisfly may contain water 75 to 90 percent of the time, but can typically go dry during the summer (Goldowitz 2004, p. 2), and completely freeze over during the winter (Alexander and Whiles 2000, p. 2).

Factor A: Hydrologic regimes, which are increasingly altered by regulation of the Platte River for hydroelectric and agricultural purposes, influence the hydroperiod in intermittent wetlands and, therefore, the abundance and distribution of the Platte River caddisfly and other macroinvertebrates that rely on this habitat (Goldowitz 2004, p. 2). For example, construction of impoundments, dewatering the Platte River for irrigation, installation of new irrigation wells in the floodplain, land restoration and management projects, and channel modification pose threats to the longevity of intermittent wetland habitat utilized by the Platte River caddisfly (Goldowitz 2004, p. 2). An increase in row crop agriculture or vegetation control can increase nutrient, toxic, and pesticide runoff that could have direct or cumulative effects on the species; heavy grazing pressure in wetland and grassland habitats can result in removal and degradation of wetland habitats critical for larval development (Goldowitz 2004, p. 9).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of Platte River caddisfly may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from construction of impoundments, dewatering the Platte

River for irrigation, installation of new irrigation wells in the floodplain, land restoration and management projects, and channel modification.

Lednia tumana (meltwater lednian stonefly)

The meltwater lednian stonefly is a narrow endemic found in two known occurrences, both in Glacier National Park in Montana. No information exists to indicate that the species exists in other locations. The species is associated with glacier melt-water streams. An extensive survey in 1979 did not result in any additional occurrences (Baumann and Stewart 1980, p. 658). A 1980 survey showed moderate abundance (Baumann and Stewart 1980, p. 658); no more refined quantification occurred and no further information has been available.

Factors A and E: Climate-change-related ecosystem modeling predicts the loss of glaciers in Glacier National Park by 2030 (Hall and Fagre 2003, p. 138). This loss of glaciers could result in the loss or significant reduction of glacier melt-water streams, resulting in reduced habitat for the meltwater lednian stonefly. Glacier melt provides water and temperature moderation in high altitude streams.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of meltwater lednian stonefly may be warranted due to other natural or manmade factors affecting its continued existence resulting from climate-change-induced glacier loss.

Lepidium ostleri (Ostler's peppergrass)

Lepidium ostleri is a narrow endemic with small populations (Evenden 1998, p. 5). The four element occurrences are restricted to limestone outcrops on Grampian Hill in Beaver County, Utah (Evenden 1998, appendix C). Estimates of occupied habitat within the species' range are 80 ha (200 ac) (Evenden 1998, appendix C) to 160 ha (400 ac) (Kass 1992b, p. 7). Estimates of the species' total population are 700 individuals (Kass 1992b, p. 8) to approximately 10,000 individuals (Evenden 1998, appendix C). These numbers are only estimates because approximately 90 percent of the species' habitat is on private land, and access to these areas to survey for the plant is limited. Population estimates from Evenden and Kass are more than a decade old, and no verification of their survey results has been made.

Factor A: Mineralized limestone substrates that sustain the species were subject to habitat destruction from precious metals mining. Over 90 percent of the species' habitat is located on lands having private, patented mining claims (Evenden 1998 p. 9; Kass 1992, p. 9). This high-value substrate on private lands to which we have no access is likely to be impacted by continued mining, and the future of *L. ostleri* on those lands is tenuous. A small portion of the species' habitat may exist on adjacent BLM land; however, we currently have no information on the number of individuals or the magnitude of threats to the species on that land.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Lepidium ostleri* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from mining activities.

Lepidomeda copei (northern leatherside chub)

The northern leatherside chub's historical range encompassed the northeastern margins of the Bonneville Basin in Utah, Idaho, and Wyoming; the Pacific Basin, Goose Creek, Wood and Raft Rivers in Idaho and Nevada; and the Snake River above Shoshone Falls in Idaho and Wyoming (UDWR 2009, p. 28). The current range includes fragmented populations in the Bear River drainage, the Snake River drainage, and introduced populations in the Colorado River Basin, including the Fremont River, Pleasant Creek, Dirty Devil River, and Quitchupah Creek in Utah (UDWR 2009, p. 29). Some taxonomic uncertainty exists; two evolutionarily distinct species of leatherside chub have recently been recognized (Johnson *et al.* 2004, pp. 841–855; Belk *et al.* 2005, p. 182). This taxon was formerly considered to be conspecific with the southern leatherside chub, and to be in the genus *Gila* (as cited in IDFG 2005, Appendix F, p. 25). A Conservation Agreement and Strategy on the species in its current range has recently been finalized by a coalition of Federal and State agencies, and nongovernmental organizations; a technical team is assessing issues related to the northern leatherside chub (UDWR 2009, entire).

Factor A: According to the NatureServe database, potential threats to the species include habitat degradation, fragmentation, and loss from water developments (*e.g.*, irrigation projects, dewatering); stream alterations (*e.g.,* channelization, barriers); siltation; grazing; and nonnative brown trout. The conservation agreement further describes these threats; surveys indicate that the species is declining due to fragmentation from human-caused activities, including water diversions, nonnative species, and grazing (IDFG 2005, p. 5; Appendix F, p. 26).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of northern leatherside chub may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from water developments, stream alterations, livestock trampling, and nonnative brown trout.

Lesquerella navajoensis (no common name)

Lesquerella navajoensis is endemic to Todilto limestone outcrops in Kane County, Utah; Apache County, Arizona; and McKinley County, New Mexico. Little is known about populations or distribution of this species beyond the two known occurrences.

Factor A: According to the NatureServe database, mining is considered a threat to the species, outcrops of Todilto limestone are not abundant in the area, and are actively mined in New Mexico for road base material. Habitat at one of the two known population sites in New Mexico has been quarried, and the species exists there only on a narrow remnant of the mesa rim (New Mexico Rare Plant Technical Council 1999, Web site). No information on this species in Utah or Arizona was available.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Lesquerella navajoensis* may be warranted due to the present or threatened destruction, modification, or

curtailment of its habitat or range resulting from mining.

Oreohelix sp. 3 (bearmouth mountainsnail)

The bearmouth mountainsnail is a local endemic with one small site known in Granite and Powell Counties, Montana (Frest and Johannes 1995, p. 115). The NatureServe database indicates that the species has been in decline in absolute numbers and number of sites, potentially due to human activities (Frest and Johannes 1995, p. 115); however, no population numbers were cited, and further information has not been available since 1995.

Factor A: According to the NatureServe database, potential threats to the species' habitat include talus disturbance, and construction and maintenance of highways. Effects from highways and associated frontage roads have impacted known sites (Frest and Johannes 1995, p. 115). Grazing has been cited as a potential threat (Frest and Johannes 1995, p. 115); however, the species exists in rocky habitat not suited to livestock grazing.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of bearmouth mountainsnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from highways and associated activities.

Oreohelix sp. 31 (Byrne Resort mountainsnail)

The Byrne Resort mountainsnail is a local endemic known only in one site in the Clark Fork River Valley in Granite County, Montana. Additional occurrences may exist on neighboring national forest land, but survey information is not available. Based on survey data, previously known sites have been extirpated, and a decline of populations and absolute numbers has occurred (Frest and Johannes 1995, p. 140).

Factor A: The species occurs at the base of talus sites that are subject to removal for road construction and fill. Effects from highways and associated frontage roads have impacted known occurrence sites, resulting in extirpation at some sites (Frest and Johannes 1995, p. 140). According to the NatureServe database, extensive alteration of the area has occurred from recreational resort activities, grazing, and highway construction; however, uncertainty exists as to whether the species has been directly affected by recreational activities and grazing.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of Byrne Resort mountainsnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from road construction.

Penstemon flowersii (flowers penstemon)

Penstemon flowersii is endemic to fine soils derived from the Uinta Formation at low elevations in the Uinta Basin in Duchesne and Uintah Counties, Utah. Little is known about this species. It is a narrow endemic, and all known habitat is on private and Ute Tribe lands (Heil and Melton 1995, pp. 8–10). Heil and Melton (1995, p. 13) estimate the species population at 15,000 to 20,000 individuals.

Factor A: The species is impacted by ORV use (Heil and Melton 1995, p. 15). Energy exploration and development are planned in the landscape where *Penstemon flowersii* exists (Heil and Melton 1995, pp. 15–16). Impacts from energy development to *A. flowersii* are the same as shown under Factor A analysis for *Astragalus hamiltonii* above; activities are the same and would have the same effect on each plant species. These threats exist within the habitat of *P. flowersii,* and are acting on the species to some degree.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Penstemon flowersii* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from ORV use and energy exploration and development.

Penstemon gibbensii (Gibben's beardtongue)

Penstemon gibbensii is endemic to south-central Wyoming and adjacent northeastern Utah, and northwestern Colorado (Fertig 2000d, p. 2). Most of the species' known range exists in Wyoming, in Sweetwater and Carbon Counties, and encompasses approximately 40 ha (100 ac) (Fertig 2000d, p. 2). Habitat for this species is primarily sparsely vegetated shale or sandstone slopes (Fertig *et al.* 1994, unpaginated; Fertig and Neighbors 1996, p. 109), associated with the Browns Park Formation and Green River shale (Fertig 2000d, p. 2). In Wyoming, four populations are known (Fertig 2000d, p. 2). Only one known population has been identified in Colorado, in Brown's Park; this population extends into Daggett County, Utah (Fertig and Neighbors 1996, p. 6). In 1995, 3 of the Wyoming populations were estimated to have a total population of 8,600 to 8,900 plants, and a 1999 survey of the fourth Wyoming population resulted in an estimated 4,500 to 5,000 plants (Fertig 2000d, p. 2). Long-term trend data are lacking (Fertig 2000d, p. 2). *P. gibbensii* was formerly designated as a C2 candidate species for listing. The C2 designation was used for species for which there was evidence of vulnerability, but for which the Service lacked sufficient biological data to support a listing proposal. In 1996, the Service ceased using the C2 designation (61 FR 64481; December 5, 1996).

Factor A: Potential threats to the species include habitat loss and degradation resulting from land uses that cause soil erosion, particularly grazing, mineral development (primarily oil and gas exploration), and recreation (Fertig and Neighbors 1996, pp. 19–20; Fertig 2000d, p. 3). Grazing is the primary threat to the species (WYNDD 2000, p. 27). ORV use affects the species; although it may colonize disturbed areas at the margins, it cannot become established where direct vehicle use occurs (WYNDD 2000, p. 28). Oil and gas development has increased greatly in the species' habitat in recent years (WYNDD 2000, p. 27). The magnitude of effects from energy development is unknown, because the species tends to occur on slopes that are too unstable to support oil drilling platforms (Fertig and Neighbors 1996, p. 20).

Factors B, C, and D: No information was presented in the petition concerning threats to this species from the factors.

Factor E: According to the references contained in NatureServe, drought may be a threat to the species (WYNDD 2000, pp. 3, 28).

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial

information to indicate that listing of *Penstemon gibbensii* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from energy exploration and development, livestock grazing, and ORV use.

Pyrgulopsis anguina (longitudinal gland pyrg)

The longitudinal gland pyrg is a freshwater snail endemic to Snake Valley, a large valley that straddles the Nevada-Utah border (Hershler 1998, p. 110). This species is known from spring systems in White Pine County, Nevada, and Millard County, Utah (Hershler 1998, p. 111; Bio-West 2007, pp. 86–87).

Factors A and E: Bio-West (2007, p. 91) characterized disturbances at species' sites (spring diversion, domestic livestock grazing, impacts from roads and residences, drought) as moderate to high in 2007. Additional potential threats include agricultural development (State of Utah 2007, p. 88) and habitat changes (*e.g.,* reduction in spring discharge) that may result from climate change or groundwater withdrawal by the Southern Nevada Water Authority in Snake and Spring Valleys (Congdon 2006, pp. 3, 15; Elliot *et al.* 2006, pp. 44, 157).

Factors B, C, and D: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of longitudinal gland pyrg may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from spring diversions, livestock trampling, roads, and development; and due to other natural or manmade factors affecting its continued existence resulting from drought and effects of climate change.

Pyrgulopsis hamlinensis (Hamlin Valley pyrg)

The Hamlin Valley pyrg is a freshwater snail that is a narrow endemic found in only one location in Beaver County, Utah.

Factors A and E: Herschler (1998, p. 105) characterized disturbances at springs inhabitated by freshwater snails throughout the region, including Hamlin Valley pyrg, as including spring diversion, domestic livestock grazing, impacts from roads and residences, and drought. Additional potential threats include agricultural development (State of Utah 2007, p. 88) and habitat changes (*e.g.,* reduction in spring discharge) that may result from climate change or groundwater contamination from several sources, including water filings by the Central Iron County Water Conservancy District in Utah, and Southern Nevada Water Authority projects in the Snake and Spring Valleys (Congdon 2006, pp. 3, 15; Elliot *et al.* 2006, pp. 44, 157). These threats exist within the habitat of the Hamlin Valley pyrg, and are acting on the species to some degree.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of Hamlin Valley pyrg may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from spring diversions, livestock trampling, roads, and development; and due to other natural or manmade factors affecting its continued existence resulting from drought and effects of climate change.

Pyrgulopsis saxatilis (sub-globose snake pyrg)

The sub-globose snake pyrg is a freshwater snail that is a narrow endemic known from one spring in Millard County, Utah.

Factors A and E: Herschler (1998, p. 105) characterized disturbances at springs inhabitated by freshwater snails throughout the region, including the sub-globose snake pyrg, as including spring diversion, domestic livestock grazing, impacts from roads and residences, and drought. Additional potential threats include agricultural development (State of Utah 2007, p. 88), the presence of the invasive mollusk *Melanoides,* and habitat changes (*e.g.,* reduction in spring discharge) that may result from climate change or groundwater contamination from several sources, including water filings by the Central Iron County water Conservancy District in Utah, and Southern Nevada Water Authority projects in the Snake and Spring Valleys (Congdon 2006, pp. 3, 15; Elliot *et al.* 2006, pp. 44, 157). These threats exist within the habitat of the sub-globose snake pyrg, and are acting on the species to some degree.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of sub-globose snake pyrg may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from spring diversions, livestock trampling, roads, and development; and due to other natural or manmade factors affecting its continued existence resulting from drought and effects of climate change.

Sisyrinchium sarmentosum (Pale blue-eyed grass)

Sisyrinchium sarmentosum is a narrow endemic that exists in Klickitat and Skamania Counties in southcentral Washington, and Clackamas County in northern Oregon. Records of this plant existing in North Dakota are suspect, and likely inaccurate. According to the NatureServe database, the species is currently known from about 18 occurrences, and the total number of individuals is thought to be 5,000 to 7,000. The species is listed as threatened by Washington State (WNHP 2009, Web site). Insufficient historical data exist to determine an overall trend in species abundance and distribution.

Factor A: According to the NatureServe database, the species has shown some ability to withstand disturbance, but development and agricultural activities have limited the amount of suitable habitat. The smaller occurrences are probably threatened by plant succession leading to canopy closure (Thomas 2009, pers. comm.). Some degree of threat may be posed by ORV use of the meadows where the species occurs (Thomas 2009, pers. comm.).

Factor B: No information was presented in the petition concerning threats to this species from the factor.

Factor C: Grazing directly impacts the plant's ability to reproduce by seed and, therefore, to broaden its genetic variability by reproduction through cross-pollination with other plants (Thomas 2009, pers. comm.). When seeds are consumed by grazing animals, the plant shifts its reproductive strategy to vegetative reproduction. Vegetative reproduction narrows the genetic makeup of plants, and the species does not benefit from cross pollination with other neighboring plants.

Factor D: No information was presented in the petition concerning threats to this species from the factor.

Factor E: The species is threatened by a genetic bottleneck and reduction in genetic flow, leading to reduced genetic

variation (Thomas 2009, pers. comm.). Because of the reduction in genetic exchange it faces in the wild, the species is less capable of withstanding other environmental stressors like drought, or climate change (Thomas 2009, pers. comm.).

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Sisyrinchium sarmentosum* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from development, livestock trampling, plant succession, and possibly ORV use; and due to other natural or manmade factors affecting its continued existence resulting from genetic reduction, drought, and effects of climate change.

Trifolium friscanum (Frisco clover)

Trifolium friscanum is a narrow endemic with small populations (Evenden 1998, p. 6). The two element occurrences are restricted to limestone outcrops on Grampian Hill in Beaver County, Utah (Evenden 1998, appendix C), and in the nearby Tunnel Spring Mountains (Evenden 1999, pp. 6–7). Estimates of the area of occupied habitat vary from 30 ha (75 ac) (Evenden 1998, appendix C; Evenden 1999, appendix B) to 225 ha (560 ac) (Kass 1992, pp. 7–8). Estimates of the species' total population vary from 2,000 individuals (Kass 1992, p. 7) to approximately 3,500 individuals (Evenden 1998, appendix C; Evenden 1999, appendix B).

Factor A: Mineralized limestone substrates that sustain the species were historically subjected to habitat destruction from precious metals mining. Over 80 percent of the species' habitat is located on lands having private, patented mining claims (Evenden 1998, p. 9; Kass 1992, p. 9).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Trifolium friscanum* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from mining.

Finding

We reviewed and evaluated 38 of the 206 petitioned species, based on the information in the petition and the literature cited in the petition, and we have evaluated the information to determine whether the sources cited support the claims made in the petition relating to the five listing factors. We also reviewed reliable information in our files.

We find that the petition does not present substantial information that listing may be warranted for nine species: Washington duskysnail (*Amnicola sp. 2*), *Camissonia exilis* (Cottonwood Spring suncup), lake disc (*Discus brunsoni*), *Frasera gypsicola* (Sunnyside green-gentian), *Lomatium latilobum* (Canyonlands lomatium), *Lygodesmia doloresensis* (Dolores river skeletonplant), Drummond mountainsnail (*Oreohelix sp. 4*), Bitterroot mountainsnail (*Oreohelix amariradix*), and keeled mountainsnail (*Oreohelix carinifera*).

We find that the petition presents substantial scientific or commercial information that listing the remaining 29 of the 38 species that we evaluated as threatened or endangered under the Act may be warranted. Therefore, we are initiating a status review to determine whether listing these 29 species under the Act is warranted.

We previously determined that emergency listing of any of the 38 species is not warranted. However, if at any time we determine that emergency listing of any of the species is warranted, we will initiate an emergency listing.

The petitioners also request that critical habitat be designated for the species concurrent with final listing under the Act. If we determine in our 12-month finding, following the status review of the species, that listing is warranted, we will address the designation of critical habitat in the subsequent proposed rule.

References Cited

A complete list of references cited is available on the Internet at Docket No. FWS–R2–ES–2008–0131 at *http://www.regulations.gov* and upon request from the Mountain-Prairie Region Ecological Services Office (see **ADDRESSES**).

Author

The primary authors of this document are the staff members of the Mountain-Prairie Region Ecological Services Offices (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (U.S.C. 1531 *et seq.*).

Dated: *August 6, 2009.*

Jerome Ford,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–19494 Filed 8–17–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0044; 92210–1117–0000–FY09–B4]

RIN 1018–AU23

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sonoma County Distinct Population Segment of California Tiger Salamander *(Ambystoma californiense)*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; public hearing announcement.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Sonoma County distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 74,223 acres (30,037 hectares) are being proposed for designation as critical habitat. The proposed critical habitat is located in Sonoma County, California.

DATES: We will accept comments received or postmarked on or before October 19, 2009. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 2, 2009.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments to Docket No. FWS–R8–ES–2009–0044.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R8–ES–2009–0044; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (*see* the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Susan Moore, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Cottage Way, W–2605, Sacramento, CA 95825; telephone 916–414–6600; facsimile 916–414–6713. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, the scientific community, industry, or other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent;

(2) Specific information on:

• The amount and distribution of California tiger salamander (CTS) habitat,

• What areas occupied at the time of listing and that contain features essential to the conservation of the species we should include in the designation and why, and

• What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Additional information concerning the range, distribution, and population size of this species, including the locations of any additional populations of this species that would help us further refine boundaries of critical habitat;

(4) Information that may assist us in clarifying the primary constituent elements;

(5) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(6) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts;

(7) Information on whether the benefit of exclusion of any particular area, such as areas covered by habitat conservation plans or other types of management agreements, outweighs the benefit of inclusion under section 4(b)(2) of the Act; and

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the California tiger salamander, a physical description of the California tiger salamander and other information about its taxonomy, distribution, life history, and biology is included in the Background section of the final rule to list California tiger salamander as a threatened species, published in the **Federal Register** on August 4, 2004 (69 FR 47212). Additional relevant information may be found in the final rules to list the Santa Barbara County Distinct Population Segment (DPS) (65 FR 57242; September 21, 2000) and the Sonoma County DPS of California tiger salamander (68 FR 13498; March 19, 2003); the proposed rules to designate critical habitat for the California tiger salamander in Santa Barbara County (69 FR 3064; January 22, 2004) and the Central population of the species range (69 FR 48570; August 10, 2004); and the final rules to designate critical habitat for the California tiger salamander in Santa Barbara County (69 FR 68568; November 24, 2004) and the Central population (70 FR 49380; August 23, 2005). The information contained in those previous **Federal Register** documents was used in developing this rule.

Previous Federal Actions

On August 4, 2004, we listed the Central California population of the California tiger salamander as a DPS as threatened (69 FR 47211). At that time we reclassified the California tiger salamander as threatened throughout its range (69 FR 47211), removing the Santa Barbara County and Sonoma County populations as separately listed DPSs (69 FR 47241).

On August 18, 2005, as a result of litigation of the August 4, 2004, final rule (69 FR 47211) on the reclassification of the California tiger salamander DPSs (*Center for Biological Diversity et al.* v. *United States Fish and Wildlife Service et al.* (Case No. C–04 4324 WHA (N.D. Cal. 2005))), the District Court of Northern California sustained the portion of the 2004 final rule pertaining to listing the Central California tiger salamander as threatened with a special rule, vacated the 2004 rule with regard to the Santa Barbara County and Sonoma County DPSs, and reinstated their prior listing as endangered. We are making the necessary changes to the information included in the Code of Federal Regulations (CFR) in the Regulatory section of this rule and will finalize the changes in the final critical habitat for the Sonoma County DPS of the California tiger salamander.

With respect to critical habitat, on October 13, 2004, a complaint was filed in the U.S. District Court for the Northern District of California (*Center for Biological Diversity et al.* v. *U.S. Fish and Wildlife Service et al.* (Case No. C–04 4324 FMS (N.D. Cal. 2005)), which in part challenged the failure of designating critical habitat for the California tiger salamander in Sonoma County. On February 3, 2005, the District Court approved a settlement agreement that required the Service to submit a final determination on the proposed critical habitat designation for publication in the **Federal Register** on or before December 1, 2005. On August 2, 2005 (70 FR 44301), the Service

published a proposed rule to designate approximately 74,223 acres (ac) (30,037 hectares (ha)) of critical habitat, and on November 17, 2005, we published a revised proposed rule indicating we were considering approximately 21,298 acres for the final designation (70 FR 69717). On December 14, 2005, the Service published a final rule in the **Federal Register** (70 FR 74138), which excluded all proposed critical habitat, resulting in a designation of zero acres of critical habitat.

On February 29, 2008, we received a notice of intent to sue from the Center for Biological Diversity that challenged the Service's final designation of critical habitat claiming that it was not based on the best available scientific information. On May 5, 2009, the Court approved a stipulated settlement agreement where the Service agreed to publish a revised proposed rule within 90 days that encompasses the same geographic area as the August 2005 proposal. This revised proposed rule complies with the May 1, 2009, stipulated agreement.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) Essential to the conservation of the species and

(II) Which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the applicant is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life-cycle needs of the species (areas on which are found the physical and biological features laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Primary Constituent Elements (PCEs)

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas occupied by the species at the time of listing to propose as critical habitat, we consider those physical and biological features that are essential to the conservation of the species that may require special management considerations or protection. We consider the physical and biological features to be the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species. The PCEs include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific PCEs from the California tiger salamander's biological needs. The physical and biological features are those PCEs essential to the conservation of the species, laid out in the appropriate quantity and spatial arrangement. All areas proposed as critical habitat for the Sonoma population are within the species' historical range and contain one or more of the PCEs identified as essential for the conservation of the species. Critical habitat for the Sonoma population includes aquatic habitat, upland nonbreeding habitat with underground refugia, and dispersal habitat connecting occupied California tiger salamander locations. The critical habitat we have proposed is designed to allow for an increase in the size of California tiger salamander populations in Sonoma County.

Standing bodies of fresh water (including natural and manmade (*e.g.*, stock)) ponds, vernal pools, and other ephemeral or permanent water bodies that typically support inundation during winter rains and hold water for a minimum of 12 consecutive weeks in a year of average rainfall, are features that are essential for Sonoma population breeding and for providing space, food, and cover necessary to sustain early life-history stages of larval and juvenile California tiger salamander. The 12 consecutive week timeframe includes the timing of winter rains initially fill pools or ponds and signal adults to move to these areas for breeding. Spring rains then maintain pool inundation which allows larvae time needed to grow into metamorphosed juveniles so they can become capable of surviving in upland habitats. During periods of drought or less-than-average rainfall, these sites may not hold water long enough for individuals to complete metamorphosis; however, these sites still meet the definition of critical habitat for the species because they constitute breeding habitat in years of average rainfall. Without areas that have these essential features, the Sonoma population would not survive, reproduce, and develop juveniles that could grow into adult individual salamanders that can complete their life cycles.

Stock ponds and vernal pools provide a significant amount of habitat for the Sonoma population remaining in the Santa Rosa Plain. Manmade stock ponds have joined or, in some areas, replaced vernal pools as breeding habitat. A landscape that supports a California tiger salamander population is typically interspersed with vernal pools or stockponds that remain inundated for at least 12 weeks in a year with average rainfall.

Upland habitats containing underground refugia have features that are essential for the survival of adult salamanders and juvenile salamanders that have recently undergone metamorphosis. Adult and juvenile California tiger salamanders are primarily terrestrial. Adult California tiger salamanders enter aquatic habitats only for relatively short periods of time to breed. For the majority of their life cycle, California tiger salamanders depend on upland habitats containing underground refugia in the form of small mammal burrows or other underground structures for their survival. These burrows provide protection from the hot, dry weather typical of California in the nonbreeding season. California tiger salamanders also find food in these refugia and rely on them for protection from predators. The presence of small burrowing mammal populations is a key element for the survival of the California tiger salamander because they construct burrows used by California tiger salamanders. Because California tiger salamanders do not construct burrows of their own, without the continuing presence of small mammal burrows in upland habitats, California tiger salamanders would not be able to survive.

Upland areas associated with the water bodies are an important source of nutrients to stock ponds or vernal pools (Swanson 1974, p. 406). These nutrients provide the foundation for the aquatic community's food chain, which includes invertebrate and vertebrate animals constituting important food sources for salamanders (Morin 1987, p. 184).

Dispersal habitats for this species are generally upland areas adjacent to aquatic habitats which provide connectivity among California tiger salamander suitable aquatic and upland habitats. While California tiger salamander can bypass many obstacles, and do not require a particular type of habitat for dispersal, the habitats connecting essential aquatic and upland habitats need to be accessible (no physical or biological attributes that prevent access to adjacent areas) to function effectively. Agricultural lands such as row crops, orchards, vineyards, and pastures do not constitute barriers to the dispersal of California tiger salamanders, however, a busy highway or interstate may constitute a barrier. The extent to which any attribute is a barrier is a function of the specific geography of the area and its contribution to limiting salamander access to a greater or lesser extent.

Dispersal habitats are needed for the conservation of the California tiger salamander. Protecting the ability of California tiger salamanders to move freely across the landscape in search of suitable aquatic and upland habitats is essential in maintaining gene flow and for recolonization of sites that may become temporarily extirpated. Lifetime reproductive success for the California tiger salamander and other tiger salamanders may be naturally low. Trenham *et al.* (2000, p. 372) found the average female bred 1.4 times and produced 8.5 young that survived to metamorphosis per reproductive effort. This reproduction resulted in roughly 12 metamorphic offspring over the lifetime of a female. In part, this low reproductive rate may be due to the extended time it takes for California tiger salamanders to reach sexual maturity; most do not breed until 4 or 5 years of age. While individuals may survive for more than 10 years, it is possible that many breed only once. This presumed low breeding rate, combined with a hypothesized low survivorship of metamorphosed individuals, indicates that reproductive output may not be sufficient to maintain populations.

Dispersal habitats help to preserve the population structure of the California tiger salamander. The life history and

ecology of the California tiger salamander make it likely that this species has a metapopulation structure. A metapopulation is a set of breeding sites within an area, where typical migration from one local occurrence or breeding site to other areas containing suitable habitat is possible, but not routine. Movement between areas containing suitable upland and aquatic habitats (*i.e.,* dispersal) is restricted due to inhospitable conditions around and between areas of suitable habitats. Because many of the areas of suitable habitats may be small and support small numbers of salamanders, local extinction of these small units may be common. The persistence of a metapopulation depends on the combined dynamics of these local extinctions and the subsequent recolonization of these areas through dispersal (Hanski and Gilpin 1991, pp. 7–9; Hanski 1994, p. 151).

Based on the above needs and our knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life-history functions of the species, we have determined that the primary constituent elements for the California tiger salamander in Sonoma County are:

(1) Standing bodies of fresh water (including natural and manmade (*e.g.,* stock)) ponds, vernal pools and other ephemeral or permanent water bodies that typically support inundation during winter/early spring and hold water for a minimum of 12 consecutive weeks in a year of average rainfall.

(2) Upland habitats adjacent and accessible to and from breeding ponds that contain small mammal burrows or other underground refugia that California tiger salamanders depend upon for food, shelter, and protection from the elements and predation.

(3) Accessible upland dispersal habitat between occupied locations that allow for movement between such sites.

Methods

This proposal is an updating of the 2005 proposed critical habitat designation for the Sonoma County DPS of the California tiger salamander. As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available in determining areas that contain the features that are essential to the conservation of the California tiger salamander in Sonoma County. We reviewed the overall approach to the conservation of the California tiger salamander undertaken by local, State, and Federal agencies operating within the species' range within Sonoma County and those efforts related to the conservation strategy being undertaken by the resource agencies, local governments, and representatives from the environmental and building communities.

We based the extent of the proposed critical habitat for the California tiger salamander in Sonoma County on historical and current range of the species as well as the Santa Rosa Plain conservation strategy. Historical records for the species and/or its habitat have been documented throughout the Santa Rosa Plain and into the Petaluma River watershed. Additional criteria used in refining the extent of the critical habitat were the specific soil types associated with habitat for the species and below the 200-foot (61-meter) elevation. Major water courses or floodplains were used to delineate boundaries where information on their location and extent was available. In addition, we used aerial photography to examine historic and current habitat as well as land use patterns.

We have also reviewed available information that pertains to the upland and aquatic habitat requirements of this species. Based on the best available information, we included areas where the species historically occurred, or currently occurs, or has the potential to occur based on the suitability of habitat. We identified areas that represent the range of environmental, ecological, and genetic variation of the California tiger salamander in Sonoma County and contain the primary constituent elements (*see Primary Constituent Elements*).

After identifying the PCEs, we used the PCEs in combination with information on California tiger salamander locations, geographic distribution, vegetation, topography, geology, soils, distribution of California tiger salamander occurrences within and between vernal pool types, watersheds, current land uses, scientific information on the biology and ecology of the California tiger salamander, and conservation principles to identify essential habitat. As a result of this process, the proposed critical habitat unit possesses a combination of occupied and potential aquatic and upland habitat types, including topography, landscape features, and surrounding land uses, and represents the geographical range and environmental variability of habitat for the California tiger salamander.

This proposed unit was delineated by digitizing a polygon (map unit) using ArcView (Environmental Systems Research Institute, Inc.) GIS program. The polygon was created by modifying the Potential Range of the California tiger salamander polygon as identified in the *Santa Rosa Plain Conservation Strategy Map* (California Department of Fish and Game 2005, p. 1). We evaluated the historic and current geographic range and potential suitable habitat, and identified areas of nonessential habitat (*i.e.,* not containing PCEs) (*see Primary Constituent Elements*). Those undeveloped areas within and adjacent to developed areas that contain the PCEs are considered potential critical habitat for the species.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas within the geographical area occupied at the time of listing contain features essential to the conservation of the species that may require special management considerations or protection.

Within the single unit proposed as critical habitat, we find that the features essential to the conservation of the California tiger salamander may require special management considerations or protection because of the threats outlined below:

(1) Activities that would threaten the utility of California tiger salamander breeding ponds in Sonoma County, such as introduction of nonnative predators, including bullfrogs and nonnative fish;

(2) Activities that could disturb aquatic breeding habitats during the breeding season, such as heavy equipment operation, ground disturbance, maintenance projects (*e.g.,* pipelines, roads, powerlines), off-road travel, or recreation;

(3) Activities that impair the water quality of aquatic breeding habitat;

(4) Activities that would reduce small mammal populations to the point that there are insufficient underground refugia used by California tiger salamander in Sonoma County for foraging, protection from predators, and shelter from the elements;

(5) Activities that create barriers impassable for salamanders or increase mortality in upland habitat between extant occurrences in breeding habitat; and

(6) Activities that disrupt vernal pool complexes' ability to support California tiger salamander breeding function.

In the case of the California tiger salamander in Sonoma County, natural repopulation is likely not possible without human assistance and landowner cooperation. Examples of such proactive activities that benefit the California tiger salamander include enhancement or creation of breeding ponds and control of nonnative

predators. These are the types of proactive, voluntary conservation efforts that are necessary to prevent the extinction and promote the recovery of many other species (Wilcove and Lee 2004, p. 639; Shogren *et al.* 1999, p. 1260; Wilcove and Chen 1998, p. 1260; Wilcove *et al.,* 1996, pp. 3–5).

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act and according to section 424.12 of our implementing regulations in the Code of Federal Regulations, we used the best scientific data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of the California tiger salamander, and areas outside of the geographical area occupied at the time of listing that are essential for the conservation of the California tiger salamander. We are proposing for designation of critical habitat lands that we have determined were occupied at the time of listing and contain the features essential to the conservation of the California tiger salamander in Sonoma County.

When determining proposed critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PCEs for the California tiger salamander. The scale of the map we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these undesignated lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the PCEs in the adjacent designated critical habitat.

Proposed Critical Habitat Designation

We are proposing to designate as a single unit critical habitat for the California tiger salamander in the Santa Rosa Plain Region. The critical habitat area described below constitutes our current best assessment of the areas that meet the definition of critical habitat for the California tiger salamander.

The approximate area encompassed within the proposed critical habitat is 74,223 acres (ac) (30,037 hectares (ha)), including approximately 887 ac (359 ha) of State lands (676 ac (274 ha) California Department of Fish and Game lands and 211 ac (85 ha) State Commission lands), 26 ac (10.5 ha) of County Regional Park land, and 73,336 ac (29,678 ha) of private and other lands. The area estimate reflects all land within the critical habitat unit boundary. No Federal lands are included in this proposed unit.

We present a brief unit description below and an explanation why it meets the definition of critical habitat for California tiger salamander in Sonoma County. The unit is located in central Sonoma County, bordered on the west by the Laguna de Santa Rosa, on the south by Skillman Road northwest of Petaluma, on the east by the foothills, and on the north by Windsor Creek.

The Santa Rosa Plain and adjacent areas are characterized by vernal pools, seasonal wetlands, and associated grassland habitat. This proposed designation represents the northernmost part of the geographic distribution of California tiger salamander and includes lands that support California tiger salamander breeding in various vernal pool complexes. This unit contains the physical and biological features essential to the conservation of the California tiger salamander in Sonoma County. The proposed designation encompasses nine vernal pool complexes, each of which contains wetlands that currently support breeding California tiger salamander in Sonoma County. At the time of listing (2003), eight of these complexes were known breeding sites, a ninth breeding location was determined subsequent to listing.

The physical and biological features essential to the conservation of the California tiger salamander in Sonoma County may require special management considerations or protections to minimize impacts from: nonnative predators; disturbance of aquatic breeding habitats; activities that impair the water quality of aquatic breeding habitat; activities that reduce underground refugia; creation of impassable barriers; and disruption of vernal pool complex processes (*see Special Management Considerations or Protections* section above).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuits Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (*see Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those PCEs that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action;
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;
- Are economically and technologically feasible; and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or

destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the California tiger salamander or its designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not Federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or retain those PCEs that relate to the ability of the area to periodically support the species. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the California tiger salamander. As discussed above, the role of critical habitat is to support the life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the California tiger salamander include, but are not limited to:

(1) Actions that would significantly compromise the function of vernal pools, swales, ponds, and other seasonal wetlands as described in the *Primary Constituent Elements* section (*see* PCE number 1). Such activities could include, but are not limited to, constructing new structures, vineyards, and roads; disking; grading; and water diversion. These activities could destroy California tiger salamander breeding sites, reduce the hydrological regime necessary for successful larval metamorphosis, and/or eliminate or reduce the habitat necessary for the growth and reproduction of the California tiger salamander.

(2) Actions that would significantly fragment and isolate aquatic and upland habitat. Such activities could include, but are not limited to, constructing new structures and new roads. These activities could limit or prevent the dispersal of California tiger salamanders from breeding sites to upland habitat or vice versa due to obstructions to movement composed of structures, certain types of curbs, or increased traffic density. These activities could compromise the metapopulation structure of the Sonoma population by reducing opportunities for recolonization of some sites that may have experienced natural local extinctions.

All lands proposed for designation as critical habitat are within the geographic area occupied by the species, and may be used by the California tiger salamander, whether for foraging, breeding, growth of larvae and juveniles, dispersal, migration, genetic exchange, or sheltering. Areas within the Santa Rosa Plain proposed critical habitat unit that contain the PCEs are essential to the conservation of the California tiger salamander. Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species. Consultations could arise if a project is proposed within a currently unoccupied portion of a critical habitat unit and the PCEs of the designated critical habitat may be adversely affected by the project.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands within the proposed critical habitat designation; therefore, there are no exemptions in this proposed rule.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise

critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make the determination that the benefits of exclusion outweigh the benefits of inclusion, we can exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

We will announce the availability of the draft economic analysis in the **Federal Register** as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov*, or by contacting the Sacramento Fish and Wildlife Office directly (*see* **FOR FURTHER INFORMATION CONTACT**). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the California tiger salamander are not owned or managed by the DOD, and therefore, anticipate no impact to national security. There are no areas proposed for exclusion based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we are requesting comments on the benefit to the California tiger salamander from the Sonoma County Office of Education's Low-Effect HCP, which covers approximately 4.42 ac (1.79 ha) in Santa Rosa, California; however, at this time, we are not proposing the exclusion of any areas in the proposed revised critical habitat for the Sonoma population of the California tiger salamander. We also request comments or information on any other management plans for the California tiger salamander within the proposed critical habitat unit. We have determined that the proposed designation does not include any Tribal lands or trust resources, and we anticipate no impact to Tribal lands or trust resources from this proposed critical habitat designation.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on the data used, specific assumptions, and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final rule may differ from this proposed rule.

Public Hearing

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review

Executive Order 12866 requires Federal agencies to submit proposed and final significant rules to the Office of Management and Budget (OMB) prior to publication in the FR. The Executive Order defines a rule as significant if it meets one of the following four criteria:

(a) The rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government;

(b) The rule will create inconsistencies with other Federal agencies' actions;

(c) The rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; or

(d) The rule raises novel legal or policy issues.

It has been determined that this rule is not ''significant.''

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small

organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or [T]ribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. The lands being proposed for critical habitat are mostly private lands with some other local government lands. Given the distribution of this species, small governments will not be uniquely affected by this proposed rule. Small governments will not be affected at all unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action is not likely to adversely modify or destroy designated critical habitat. However, as discussed above, Federal agencies are currently required to ensure that any such activity is not likely to jeopardize the species, and no further regulatory impacts from the designation of critical habitat are anticipated. Because we believe this rule will not significantly or uniquely affect small governments, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the California tiger salamander in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the California tiger salamander does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State of California resource agencies. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. This information does not alter where and what Federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or

authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the California tiger salamander.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's Manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'', we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have determined that there are no Tribal lands essential for the conservation of the California tiger salamander. Therefore, designation of critical habitat for the Sonoma population of the California tiger salamander has not been designated on Tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Based on the previous proposal and final designation of critical habitat in this area, we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Sacramento Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for ''Salamander, California tiger'' under ''AMPHIBIANS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Salamander, California tiger.	Ambystoma californiense.	U.S.A. (CA)	U.S.A. (CA–Santa Barbara County).	E	667E, 702	17.95(d)	NA.
Do	.....do	.....do	U.S.A. (CA–Sonoma County).	E	729E, 734	.....do	.....do
Do	.....do	.....do	.....	T	.....	.....do	17.43(c).
*	*	*	*	*	*		*
			U.S.A. (CA–Central)		744		

3. Amend § 17.95(d) by revising critical habitat for the California tiger salamander (*Ambystoma californiense*) in Sonoma County to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

California Tiger Salamander (Ambystoma californiense)

* * * * *

California Tiger Salamander in Sonoma County

(52) The critical habitat unit for Sonoma County, CA, is depicted on the map below.

(53) The primary constituent elements of critical habitat for the Sonoma County population of the California tiger salamander are the habitat components that provide:

(i) Standing bodies of fresh water (including natural and manmade (*e.g.*, stock)) ponds, vernal pools, and other ephemeral or permanent water bodies that typically support inundation during winter and early spring and hold water for a minimum of 12 weeks in a year of average rainfall.

(ii) Upland habitats adjacent and accessible to and from breeding ponds that contain small mammal burrows, or other underground refugia that California tiger salamanders depend upon for food, shelter, and protection from the elements and predation.

(iii) Accessible upland dispersal habitat between occupied locations that allow for movement between such sites.

(54) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(55) Critical Habitat Unit: Santa Rosa Plain Unit, Sonoma County, CA. Data layers defining the map unit were created on a base of USGS 7.5′ quadrangles, and the critical habitat unit was then mapped using Universal Transverse Mercator (UTM) coordinates.

(56) Santa Rosa Plain Unit, Sonoma County, CA. From USGS 1:24,000 quadrangle map Healdsburg, Sebastopol, Santa Rosa, Two Rock, Cotati, Petaluma, and Mark West Springs, CA. *Note:* Map of Santa Rosa Plain Unit follows:

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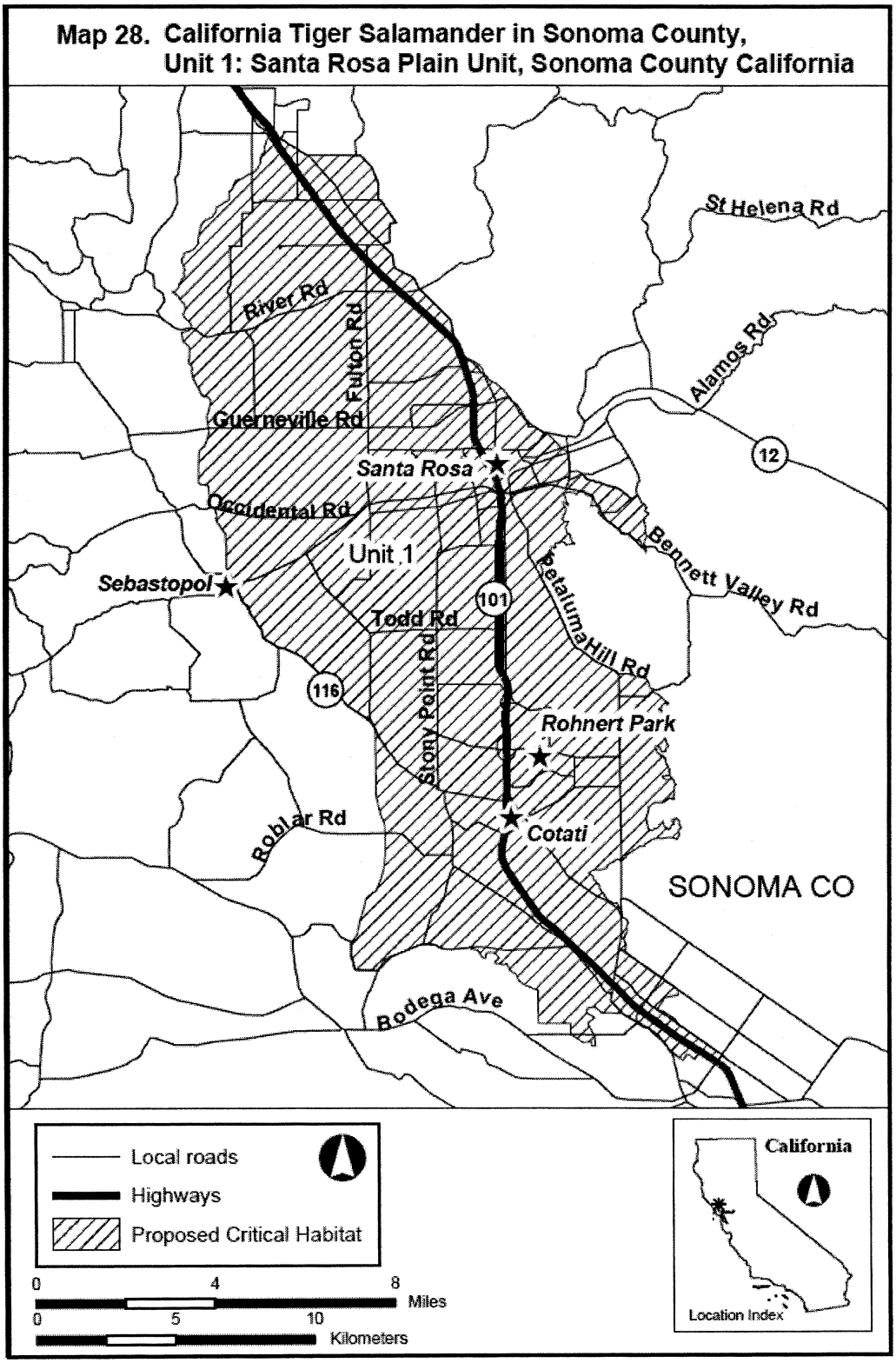

* * * * *

Dated: August 3, 2009.

Jane Lyder,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–18885 Filed 8–17–09; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 74, No. 158
Tuesday, August 18, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Form FNS–143, Claim for Reimbursement (Summer Food Service Program); Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Department of Agriculture's Food and Nutrition Service published a document in the **Federal Register** on August 7, 2009, concerning requests for comments on the Summer Food Service Program Claim for Reimbursement, Form FNS–143. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Rodgers-Kuperman at (703) 305–2590.

Correction

In the **Federal Register** of August 7, 2009, in FR/Vol. 74, No. 151 on page 39609, the second column, correct the ''Expiration Date'' caption to read: Expiration Date: January 31, 2010.

Dated: August 11, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–19766 Filed 8–17–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for North Fork Smith and Upper Rogue National Wild and Scenic Rivers, Rogue River-Siskiyou National Forest, Jackson, Douglas, Klamath, and Josephine Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: On August 4, 2009, in accordance with 16 U.S.C. 127 1–1287 (section 3(b) of the Wild and Scenic Rivers Act), the USDA Forest Service, Washington Office, transmitted the final boundaries of the North Fork Smith and Upper Rogue National Wild and Scenic Rivers to Congress. As specified by law, the boundaries will not be effective until ninety days after Congress receives the transmittal.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting the Rogue River Siskiyou National Forest, P.O. Box 520, Medford, Oregon 97501, 541–858–2200.

SUPPLEMENTARY INFORMATION: The North Fork Smith and Upper Rogue National Wild and Scenic Rivers boundaries are available for review at the following offices: USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenues, SW., Washington, DC 20024; USDA Forest Service, Pacific Northwest Region, 333 SW. 1st Ave., Portland, OR 97208; and, Rogue River-Siskiyou National Forest, 333 West 8th Street, Medford, Oregon.

The Omnibus Oregon Wild and Scenic Rivers Act of 1988 (Pub. L. 100–557) of October 28, 1988, designated the North Fork Smith and the Upper Rogue River, Oregon, as National Wild and Scenic Rivers, to be administered by the Secretary of Agriculture.

Dated: August 7, 2009.

Claire Lavendel,

Regional Director of Recreation, Lands and Minerals.

[FR Doc. E9–19512 Filed 8–17–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Finding of No Significant Impact on the Final Programmatic Environmental Assessment for the Farm Storage Facility Loan Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice; Finding of No Significant Impact.

SUMMARY: This notice announces that the Farm Service Agency (FSA), on behalf of the Commodity Credit Corporation (CCC), has completed a Final Programmatic Environmental Assessment (PEA) and is issuing a Finding of No Significant Impact (FONSI) with respect to the implementation of changes to the Farm Storage Facility Loan (FSFL) program enacted by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill).

DATES: We will consider comments that we receive by September 17, 2009.

ADDRESSES: We invite you to submit comments on this Final PEA. In your comments, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *E-mail: FSFLPEA@geo-marine.com.*
- *Online:* Go to the Web site at *http://public.geo-marine.com*. Follow the online instructions for submitting comments.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* (757) 873–3703.
- *Mail:* FSFL Program PEA, c/o Geo-marine Incorporated, 2713 Magruder Boulevard Suite D, Hampton, VA 23666.
- *Hand Delivery or Courier:* Deliver comments to the above address.

Comments may be inspected in the Office of the Director, CEPD, FSA, USDA, 1400 Independence Ave., SW., Room 4709 South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of the FONSI and Final PEA is available through the FSA home page at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep-cd*.

FOR FURTHER INFORMATION CONTACT: Matthew Ponish, National Environmental Compliance Manager, USDA, FSA, CEPD, Stop 0513, 1400 Independence Ave., SW., Washington, DC 20250–0513, (202) 720–6853, or e-mail: *Matthew.Ponish@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The FSFL program provides, through the FSA county offices, low-interest loans to eligible producers for the purposes of constructing or upgrading on-farm storage facilities for storing eligible

facility loan commodities that such producers produce. The FSFL program is authorized under the CCC Charter Act (15 U.S.C. 714–714p). FSA, on behalf of CCC, administers the FSFL program. The 2008 Farm Bill (Pub. L. 110–246) includes several changes to the FSFL program.

The Final PEA assesses the potential environmental impacts associated with implementing changes to provisions of the FSFL program as required by sections 1404 and 1614 of the 2008 Farm Bill (7 U.S.C. 8789). The 2008 Farm Bill specifies the increases to the maximum term of a farm storage facility loan and the maximum loan amount, identifies additional commodities eligible for storage, specifies the required loan security, allows for partial disbursement of loans, and no longer requires a severance agreement if certain conditions are met. In addition, the 2008 Farm Bill gives the Secretary discretionary authority to determine other eligible facility loan commodities. The need for the Proposed Action is to implement provisions of the 2008 Farm Bill that revise the FSFL program. The specific changes to the FSFL program include:

- Adding hay and renewable biomass as eligible facility loan commodities and making the appropriate storage facilities eligible for loans;
- Extending the maximum loan term to 12 years;
- Increasing the maximum loan amount to $500,000;
- Allowing one partial loan disbursement and the final disbursement;
- Specifying the loan security requirements and allowing the borrower the option to increase the down payment on a loan, instead of requiring a severance agreement from the holder of any prior lien on the real estate where the storage facility is located; and
- As a discretionary provision, adding vegetables and fruits that require cold storage facilities as eligible facility loan commodities.

FSA analyzed the No Action Alternative (continuation of the FSFL program as currently implemented) as an environmental baseline.

The Final PEA also provides a means for the public to voice any suggestions they may have about the program and any ideas for rulemaking. The Final PEA can be reviewed online at: *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep-cd.*

The Final PEA was completed as required by the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and FSA's policy and procedures (7 CFR part 799). Additional analysis under NEPA of potential impacts associated with certain implementation alternatives not included in the PEA may be conducted, as appropriate.

Determination

In consideration of the analysis documented in the Final PEA and the reasons outlined in the FONSI, the preferred alternative (proposed action) would not constitute a major State or Federal action that would significantly affect the human environment. In accordance with NEPA, 40 CFR part 1502.4, ''Major Federal Actions Requiring the Preparation of Environmental Impact Statements,'' and 7 CFR part 799, ''Environmental Quality and Related Environmental Concerns—Compliance with the National Environmental Policy Act,'' and the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), I find that neither the proposed action nor any of the alternatives analyzed constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no environmental impact statement will be prepared.

Signed in Washington, DC, on August 11, 2009.

Jonathan W. Coppess,

Acting Administrator, Farm Service Agency, and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E9–19644 Filed 8–17–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #500, Obstruction Removal; #326, Clearing and Snagging; #460, Land Clearing; #572, Spoil Spreading; #466, Land Smoothing; #521C, Pond Sealing or Lining, Bentonite Sealant; #521B, Pond Sealing or Lining, Soil Dispersant; #521A, Pond Sealing or Lining, Flexible Membrane; #521D, Pond Sealing, Compacted Clay Treatment. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to John A. Bricker, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1691; Fax number (804) 287–1737. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site: *http://www.va.nrcs.usda.gov/technical/draftstandards.html.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: August 11, 2009.

W. Ray Dorsett,

Acting State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. E9–19765 Filed 8–17–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Short Supply—Unprocessed Western Red Cedar.

OMB Control Number: 0694–0025.

Form Number(s): None.

Type of Request: Extension of a currently approved collection without change.

Burden Hours: 35.

Number of Respondents: 35.

Average Hours per Response: 1 hour.

Needs and Uses: Section 7(i) of the Export Administration Act (EAA) of 1979, as amended, prohibits the export of unprocessed western red cedar (WRC) harvested from State or Federal lands, except for unprocessed WRC harvested under contracts entered into before September 30, 1979. To enforce this prohibition, section 754.4 of the Export Administration Regulations requires a validated license for the export of unprocessed WRC harvested from private lands or from State or Federal lands under contracts entered into prior to October 1, 1979. Applications for export licenses must include affidavits, supported by a certificate of inspection issued by a log scaling and grading bureau, to prove the applicant's compliance with the EAA.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: August 12, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–19728 Filed 8–17–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

RIN 0572–ZA01

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

RIN 0660–ZA28

Broadband Initiatives Program; Broadband Technology Opportunities Program

AGENCY: Rural Utilities Service (RUS), Department of Agriculture, and National Telecommunications and Information Administration (NTIA), Department of Commerce.

ACTION: Notice of Funds Availability; extension of application closing deadline for pending electronic applications.

SUMMARY: RUS and NTIA announce that the application closing deadline for the Broadband Initiatives Program (BIP) and the Broadband Technology Opportunities Program (BTOP) is extended until 5 p.m. Eastern Time (ET) on August 20, 2009, for any electronic applications pending as of 5 p.m. ET on August 14, 2009. There are no changes to the filing instructions for paper applications.

DATES: An applicant that is submitting an application for the BIP and BTOP electronically will be permitted to complete electronic submission of its application until 5 p.m. ET on August 20, 2009, so long as its application was pending in the Easygrants® System as of 5 p.m. ET on August 14, 2009 (application closing deadline).

FOR FURTHER INFORMATION CONTACT: For general inquiries regarding BIP, contact David J. Villano, Assistant Administrator Telecommunications Program, Rural Utilities Service, e-mail: *bip@wdc.usda.gov*, telephone: (202) 690–0525. For general inquiries regarding BTOP, contact Anthony Wilhelm, Deputy Associate Administrator, Infrastructure Division, Office of Telecommunications and Information Applications, National Telecommunications and Information Administration, e-mail: *btop@ntia.doc.gov, telephone:* (202) 482–2048.

SUPPLEMENTARY INFORMATION: On July 9, 2009, RUS and NTIA published a Notice of Funds Availability (NOFA) and Solicitation of Applications in the **Federal Register** announcing general policy and application procedures for the BIP and BTOP. 74 FR 33104 (2009). In the NOFA, RUS and NTIA encouraged all applicants to submit their applications electronically and required that certain applications be filed electronically through an online application system at *http://www.broadbandusa.gov.* 74 FR at 33118. RUS and NTIA established an application window for these grant programs from July 14, 2009, at 8 a.m. ET through August 14, 2009, at 5 p.m. ET (application closing deadline).

Over the last several days, the online application system (Easygrants® System) has experienced service delays due to the volume of activity from potential applicants. The agencies have added additional servers to address these capacity issues. Nevertheless, in an effort to give applicants that have already started the electronic application submission process prior to the application closing deadline an opportunity to complete the submission of those applications, RUS and NTIA announce that an applicant with an application pending in the Easygrants® System as of 5 p.m. ET on August 14, 2009, will be given until 5 p.m. ET on August 20, 2009, to complete the electronic submission of its application. Please note that an applicant must have completed the following steps, at a minimum, to be recognized as having a pending application in the Easygrants® System:

1. Log into the Easygrants® System at *www.broadbandusa.gov;*

2. Select ''Start a new application'' under ''Apply for a new grant/loan;''

3. Select one of the two choices for available funding opportunities;

4. Select ''Continue;'' and

5. Select ''ok'' when prompted ''Are you sure you want to apply for the program.''

All other requirements for electronic submissions set forth in the NOFA remain unchanged. There are no changes to the filing instructions, requirements, or application deadline for paper submissions.

Dated: August 13, 2009.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

Anna M. Gomez,

Acting Assistant Secretary for Communications and Information, National Telecommunications and Information Administration.

[FR Doc. E9–19750 Filed 8–13–09; 4:15 pm]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ97

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: NOAA's National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U. S. Department of Commerce.

ACTION: Issuance of an enhancement permit.

SUMMARY: Notice is hereby given that NMFS has issued Permit 14159 to NMFS Protected Resource Division (PRD) in Long Beach, CA.

ADDRESSES: The permit application, the permit, and related documents are available for review, by appointment, at the foregoing address at: Protected Resources Division, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802 (ph: 562–980–4026, fax: 562–980–4027, e-mail at: *Matthew.McGoogan@noaa.gov*).. The permit application is also available for review online at the Authorizations and Permits for Protected Species website at *https://apps.nmfs.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Matt McGoogan at 562–980–4026, or e-mail: Matthew.McGoogan@noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority

The issuance of permits, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith,; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and, (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222–226) governing listed fish and wildlife permits.

Species Covered in This Notice

This notice is relevant to federally endangered Southern California Distinct Population Segment of steelhead (*Oncorhynchus mykiss*).

Permits Issued

A notice of the receipt of an application for Permit 14159 was published in the **Federal Register** on March 26, 2009 (74 FR 13192). Permit 14159 was issued to NMFS PRD on June 11, 2009. Permit 14159 authorizes NMFS PRD to conduct and oversee steelhead rescue activities for the endangered steelhead in coastal streams from the Santa Maria River south to the Mexican border. The purpose of this permit is for the enhancement of survival of endangered steelhead.

Criteria are defined in the permit application to provide an objective biological basis for determining whether a steelhead rescue is reasonable and necessary to enhance the population. These criteria include instream characteristics and conditions within the affected area, the cause for any observed or projected streamflow decreases or dewatering, the availability of suitable instream areas to safely harbor the rescued steelhead (i.e., relocation areas), and the abundance of steelhead within the affected area. The permit will be applicable only in the following situations: when a rapid response is crucial to steelhead survival, and when mortality of steelhead, if not rescued and relocated, is reasonably certain; and, when take authorization has not been granted, or is not expected, under Section 7 or Section 10 of the ESA. The permit application further defines criteria to increase the likelihood that the permit will not be misused.

NMFS' specific responsibilities under the rescue and relocation activities involves: (1) serving as the permit holder, principal investigator, and the primary contact, (2) designating and collaborating with the California Department of Fish and Game (CDFG) as a co-investigator, (3) determining the need for a steelhead rescue and relocation, and (4) providing written authorization for undertaking steelhead rescue and relocation. NMFS will retain discretion as principal investigator under the permit for determining, either individually or in collaboration with CDFG, whether a steelhead rescue and relocation are warranted using the established rescue criteria.

With regard to authorizing steelhead rescue and relocation, the permit grants NMFS the authority to legally allow its own qualified biologists or those of the CDFG to conduct and oversee operations to capture and relocate steelhead when an imminent threat to the survival of individuals exists and when the rescue criteria are met. Once the determination has been made that a steelhead rescue is needed, NMFS will coordinate the rescue and relocation operation with its own biologists and (or) those of the CDFG. NMFS and CDFG biologists listed on the permit may enlist help of other qualified individuals to participate in steelhead rescue operations. However, at least one NMFS or CDFG biologist listed on the permit must be present at all times during rescue operations (i.e., persons not listed on the permit cannot conduct fish rescue activities without a permitted NMFS or CDFG representative present).

Permit 14159 authorizes NMFS PRD an annual non-lethal take of up to 2000 juvenile steelhead and 100 adult steelhead. The permit also authorizes an annual collection and possession of up to 100 steelhead tissue samples as well as permission to recover up to 20 carcasses per year (if found). All samples and carcasses will be sent to NMFS science center for genetic research and possessing. No intentional lethal take has been authorized for this permit. The authorized unintentional lethal take (mortalities) that may occur during rescue activities is up to100 juvenile steelhead per year. Permit 14159 expires on December 31, 2019.

Dated: August 12, 2009.

Therese Conant,

Acting Division Chief, Endangered Species Division Chief, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–19772 Filed 8–17–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Energy Efficiency Trade Mission to India (November 16–20, 2009)

AGENCY: Department of Commerce.

ACTION: Notice.

Mission Description

Ro Khanna, Deputy Assistant Secretary for Domestic Operations, U.S. and Foreign Commercial Service, will lead an Energy Efficiency Trade Mission to India, November 16–20, 2009. Organized by the United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS), in partnership with the U.S. Department of Energy (DOE) and U.S. Agency for International Development (USAID), the mission will introduce U.S. manufacturers of energy efficient products and technologies to opportunities in the Indian market. Delegation members will participate in a major DOE and USAID event called ''U.S.-India Energy Efficiency Technology Cooperation Conference'' in New Delhi. The mission will include appointments, briefings and site visits in New Delhi, Chennai and Mumbai,

some of India's most progressive cities dealing with energy efficiency. Trade mission participants will have customized business matchmaking appointments with potential clients, end-users, and partners, and meetings with key Government of India (GOI) and local government officials.

Commercial Setting

India is increasingly exploring energy efficient ways of expanding its power supply, due to very limited natural resources and chronic power shortages. In May 2008, the Ministry of Power stated that the energy conservation potential with today's technologies could be 20,000 MW. The Government of India (GOI), aligned with five-year plans, saved only 877 MW from 2002–2007, but from 2007–2012, the target is 10,000 MW. With some of the highest energy prices in the world, Indian companies already have a strong incentive to save on these costs.

New GOI targets will soon accelerate the growth of the energy efficiency market in India. To reduce both energy costs and waste, the National Action Plan on Climate Change will soon regulate large energy users such as railways and the aluminum, cement, chlor-alkali, pulp and paper, fertilizer and steel industries, as well as power generation plants. The GOI Bureau of Energy Efficiency will establish sector targets by March 2010, after which point large energy users will be regulated on their energy usage as per the industry targets. This provides tremendous potential for U.S. manufacturers of energy efficient products and energy service companies to tap into these lucrative opportunities. While energy efficiency has many applications in India, recruitment efforts for the trade mission will focus on two of the most promising:

- *Industrial:* The energy intensity, or the amount of energy used, in India is generally very high due to obsolete and inefficient energy technologies. The industrial sector comprises 50 percent of India's commercial energy use. According to the Asian Development Bank, the market potential for industrial energy efficiency is approximately $27 billion (with energy savings of 7000 MW). To reduce energy consumption, the GOI plans to analyze the energy requirements of 750 large industrial installations across the above-mentioned energy-intensive sectors, which will be an opportunity for U.S. companies to participate in upgrading equipment and processes. Best prospects for U.S. firms include energy efficient compressors, boilers, turbines, combined cycle power production, heat recovery technology, process control systems, hydraulics, cogeneration equipment, meters, sensors/controls, heating/cooling (HVAC) systems, lighting units, pumps, appliances, steam systems/generators, and related IT and energy services.
- *Construction/green building:* India's green building market is expected to grow to $3.1 billion by 2010. In 2008, fifteen LEED (Leader in Energy and Environmental Design)-certified green buildings were erected in India, with over 1,000 green-friendly buildings expected by 2010. The certifications were made by the CII–Green Business Centre based on standards established by the U.S. Green Building Council. Additionally, many of the industrial installations mentioned above will likely adopt some green building techniques to further cut down their energy costs to meet the new industry energy-usage standards. Green buildings lend a cachet for large Indian companies and multinationals in their development plans. Best prospects include, but are not limited to, heating/cooling (HVAC) systems, lighting units, pumps, appliances, steam systems/generators, roofing systems, windows, recycled building materials, efficient water technologies, renewable energy technologies, landscape design and effective controls and building management systems.
- The mission stops will focus on three of the most promising cities in India for energy efficiency: New Delhi, Chennai and Mumbai, with matchmaking in all three cities. New Delhi, as India's capital, will offer the aforementioned DOE/USAID conference and meetings with GOI officials to learn more about policies and opportunities in India. Chennai, an industrial/manufacturing hub, has enormous potential for energy efficiency. Likewise, Mumbai has many energy-intensive industries that could benefit from energy efficient products and services.

Mission Goals

The goal of the Energy Efficiency Trade Mission to India is to (1) facilitate deals by match-making U.S. companies with pre-screened industry representatives and potential clients, customers and partners; and (2) introduce U.S. companies to industry and government officials in India to learn about policy initiatives that will ease the implementation and financing of energy efficiency projects.

Mission Scenario

The first stop on the mission itinerary is New Delhi. The delegates will participate in a DOE/USAID conference on Energy Efficiency, which will allow them to network and learn about policies and market opportunities in India. Additionally, the Commercial Service office in India (CS India) will work with the conference organizers to include the U.S. trade mission participants as speakers for the appropriate technical sessions of the conference. The conference will be attended by top decision makers from the Government of India and executives of large companies. The policy recommendations from the last conference in 2006 were influential in helping the Indian Government to formulate its Integrated Energy Strategy later that year. After (and during) the conference, the CS office in New Delhi will arrange one day of matchmaking for each company.

Then the group will travel to Chennai, a state with chronic power shortages, for matchmaking meetings and a networking reception. Given its power woes, energy efficiency is a top political priority for the state. Moreover, Chennai is the base for many large Indian and foreign manufacturing installations, which could benefit from energy efficient services and technologies, and home to India's National Energy Efficiency Center of Excellence. Additionally, the green building concept has also gained prominence in Chennai as some of the most recent LEED-certified buildings were built there in 2008.

Finally, the delegation will visit Mumbai to participate in one day of matchmaking meetings. As the business and financial capital of the country, Mumbai is home to many energy-intensive industrial sectors and many of the leading design/architecture firms that promote green building in India. The Commercial Service office in Mumbai will arrange matchmaking meetings with potential end-users as well as joint venture partners, and will also organize a roundtable session to discuss financing mechanisms for energy efficiency projects in India.

Participation in the mission will include the following:

- Pre-travel briefings/webinar on subjects ranging from business practices in India to security;
- Pre-scheduled meetings with potential partners, distributors, end-users, or local industry contacts in New Delhi, Chennai and Mumbai;
- Transportation to airports in New Delhi, Chennai and Mumbai;
- Conference in New Delhi;
- Meetings with Indian Government officials;

• Participation in industry receptions in New Delhi and Chennai and a financing roundtable luncheon in Mumbai; and

• Meetings with CS India's energy efficiency industry specialists in New Delhi, Chennai and Mumbai.

Proposed Mission Timetable

Companies will be encouraged to arrive Saturday to allow time to rest after their long trip and adjust to the time change before the mission program begins on Monday, November 16.

Monday November 16	New Delhi Welcome briefing by U.S. Departments of Commerce and State, Participation in DOE/AID Energy Efficiency Conference, One-on-one business matchmaking appointments, Networking reception.
Tuesday November 17	New Delhi Participation in DOE/AID Energy Efficiency Conference, One-on-one business matchmaking appointments.
Wednesday November 18	New Delhi/Chennai Morning flight to Chennai, One-on-one business matchmaking appointments, Networking reception.
Thursday November 19	Chennai/Mumbai One-on-one business matchmaking appointments, Optional site visit, Evening flight to Mumbai.
Friday November 20	Mumbai One-on-one business matchmaking appointments, Roundtable on financing mechanisms for energy efficiency projects in India.

Participation Requirements

All parties interested in participating in the Energy Efficiency Trade Mission to India must complete and submit an application for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission will be open on a first come first served basis to 12 qualified U.S. companies.

Fees and Expenses:

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $3,500 for small or medium-sized enterprises (SME),* and $4,200 for large firms, which includes one principal representative. The fee for each additional firm representative (large firm or SME) is $750. Expenses for lodging, some meals, incidentals, and travel (except for transportation to and from airports in-country, previously noted) will be the responsibility of each mission participant. The conference fee is included in the trade mission cost.

Conditions for Participation:

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation:

Selection will be based on the following criteria:

• Suitability of a company's products or services to the mission's goals

• Applicant's potential for business in India, including likelihood of exports resulting from the trade mission

• Consistency of the applicant's goals and objectives with the stated scope of the trade mission

Any partisan political activities (including political contributions) of an applicant are entirely irrelevant to the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than September 30, 2009. The mission will be open on a first come first served basis. Applications received after that date will be considered only if space and scheduling constraints permit.

Contacts:

Houston Export Assistance Center: Ms. Nyamusi Igambi, *Nyamusi.Igambi@mail.doc.gov*, *Ph:* 713–209–3112, *Fax:* 713–209–3135.

U.S. Commercial Service in India: Mr. Vaidyanathan Purushothaman, U.S. Commercial Service Chennai, *Ph:* 91–44–2857–4031, *Fax:* 91–44–2857–4212, *Vaidyanathan.purushothaman@mail.doc.gov*.

Sean Timmins,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. E9–19777 Filed 8–17–09; 8:45 am]

BILLING CODE 3510–FP–P

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information see *http://www.export.gov/newsletter/march2008/initiatives.html*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Seventh Administrative Review of Honey From the People's Republic of China: Extension of Time Limit for the Preliminary Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 18, 2009.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone- (202) 482–6345.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2009, the Department of Commerce (''Department'') published a notice of initiation of an administrative review of honey from the People's Republic of China (''PRC''), covering the period December 1, 2007 through November 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 5821 (February 2, 2009). On

March 6, 2009, after receiving comments on U.S. Customs and Border Protection data, the Department selected Anhui Native Produce Import & Export Corp. (''Anhui Native'') and Qinhuangdao Municipal Dafeng Industrial Co., Ltd. (''QMD'') as the mandatory respondents for this review.

The Department sent its antidumping questionnaire to Anhui Native and QMD on March 9, 2009. The Department was unable to deliver its questionnaire to QMD due to incorrect addresses. *See* Memorandum to the File from Blaine Wiltse, Case Analyst, RE: Seventh Administrative Review of Honey from the People's Republic of China (''PRC''): Incorrect Addresses for QMD, dated March 27, 2009. On March 30, 2009, Dongtai Peak Honey Industry Co., Ltd. (''Dongtai Peak'') requested treatment as a voluntary respondent, and submitted its Section A response to the Department. On April 13, 2009, the Department selected Dongtai Peak as a voluntary respondent for this review. On April 14, 2009, Dongtai Peak submitted its Sections C and D response to the Department. On April 15, 2009, Anhui Native withdrew its participation from the current review. On June 8, 2009, and June 16, 2009, the Department sent its Supplemental Sections A, C, and D Questionnaire and its Importer Specific Supplemental Questionnaire to Dongtai Peak. On July 8, 2009, and July 13, 2009, Dongtai Peak submitted its response to the Department's Importer Specific Supplemental Questionnaire and Supplemental Sections A, C, and D Questionnaire. The preliminary results of this administrative review are currently due on September 2, 2009.

Extension of Time Limit for the Preliminary Results

The Department determines that completion of the preliminary results of this review within the statutory time period is not practicable. The Department requires more time to gather and analyze surrogate value information pertaining to this company. Additionally, the Department intends to provide additional time for interested parties to provide comments on supplemental questionnaires and suggested surrogate values. Lastly, the Department requires additional time to analyze the questionnaire responses and to issue additional supplemental questionnaires, if necessary. Therefore, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), we are extending the time period for issuing the preliminary results of review by 60 days until November 2, 2009.[1] The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: August 12, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–19780 Filed 8–17–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Final Results of Antidumping Duty Changed Circumstances Review: Light–Walled Rectangular Pipe and Tube From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 18, 2009, the Department of Commerce (the Department) made its preliminary determination that Ternium Mexico S.A. de C.V. (Ternium) is the successor–in-interest to Hylsa S.A. de C.V. (Hylsa) and should be treated as such for antidumping duty cash deposit purposes. *See Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Light–Walled Rectangular Pipe and Tube from Mexico*, 74 FR 28887 (June 18, 2009) *(Preliminary Results).* For purposes of these final results of review, the Department has determined that Ternium is the successor–in-interest to Hylsa and, as a result, should be accorded the same treatment previously accorded to Hylsa in regard to the antidumping duty order on light–walled rectangular pipe and tube (LWRPT) from Mexico as of the date of publication of this notice in the **Federal Register**.

DATES: *Effective Date:* August 18, 2009.

FOR FURTHER INFORMATION CONTACT: John Drury or Brian Davis, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2008, Ternium requested that the Department conduct a changed circumstances review of the antidumping duty order of LWRPT from Mexico to determine whether Ternium is the successor–in-interest to Hylsa and should be treated as such for antidumping duty cash deposit purposes. *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Light–Walled Rectangular Pipe and Tube from Mexico*, 73 FR 63686 (October 27, 2008) (*Notice of Initiation*). On June 18, 2009, the Department preliminarily determined that Ternium is the successor–in-interest to Hylsa and should be treated as such for antidumping duty cash deposit purposes. *See Preliminary Results.*

On July 13, 2009, the Department published in the **Federal Register** a notice extending the time limit for these final results to August 17, 2009. *See Light–Walled Rectangular Pipe and Tube from Mexico; Extension of Time Limit for Final Results of Antidumping Duty Changed Circumstances Review*, 74 FR 33406 (July 13, 2009).

In the *Preliminary Results*, we stated that interested parties could request a hearing no later than 30 days after the publication of the *Preliminary Results*, submit case briefs to the Department no later than 30 days after the publication of the Preliminary Results, and submit rebuttal briefs, limited to the issues raised in those case briefs, five days subsequent to the case briefs' due date. We did not receive any hearing requests or comments on the *Preliminary Results.*

Scope of the Order

The merchandise subject to this order is certain welded carbon quality light–walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon–quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon–quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of

[1] Sixty days from September 2, 2009, is November 1, 2009. However, Department practice dictates that where a deadline falls on a weekend, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium.

The description of carbon–quality is intended to identify carbon–quality products within the scope. The welded carbon–quality rectangular pipe and tube subject to this order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Final Results of Changed Circumstances Review

Based on the information provided by Ternium, the Department's analysis in the *Preliminary Results*, and the fact that interested parties did not submit any briefs during the comment period, the Department hereby determines that Ternium is the successor–in-interest to Hylsa for antidumping duty cash deposit purposes.

Instructions to U.S. Customs and Border Protection

The Department will instruct U.S. Customs and Border Protection to continue to suspend liquidation of all shipments of the subject merchandise produced and exported by Ternium entered, or withdrawn from warehouse, for consumption, on or after the publication date of this notice in the **Federal Register** at 3.76 percent (*i.e.*, Hylsa's cash deposit rate). This deposit requirement shall remain in effect until further notice.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is herby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Tariff Act of 1930, as amended, and 19 CFR 351.216.

Dated: August 11, 2009.

Carole Showers,

Acting Deputy Assistant Secretary For Policy and Negotiations.

[FR Doc. E9–19822 Filed 8–17–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Final Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non–Alloy Steel Pipe and Tube from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 18, 2009, the Department of Commerce (the Department) made its preliminary determination that Ternium Mexico S.A. de C.V. (Ternium) is the successor–in-interest to Hylsa S.A. de C.V. (Hylsa) and should be treated as such for antidumping duty cash deposit purposes. *See Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non–Alloy Steel Pipe and Tube from Mexico*, 74 FR 28883 (June 18, 2009) (*Preliminary Results).* For purposes of these final results of review, the Department has determined that Ternium is the successor–in-interest to Hylsa and, as a result, should be accorded the same treatment previously accorded to Hylsa in regard to the antidumping duty order on certain circular welded non–alloy steel pipe and tube (standard pipe and tube) from Mexico as of the date of publication of this notice in the **Federal Register**.

DATES: *Effective Date:* August 18, 2009.

FOR FURTHER INFORMATION CONTACT: John Drury or Brian Davis, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2008, Ternium requested that the Department conduct a changed circumstances review of the antidumping duty order on standard pipe and tube from Mexico to determine whether Ternium is the successor–in-interest to Hylsa and should be treated as such for antidumping duty cash deposit purposes. *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Circular Welded Non–Alloy Steel Pipe and Tube*, 73 FR 63682 (October 27, 2008) *(Notice of Initiation).* On June 18, 2009, the Department made its preliminary determination that Ternium is the successor–in-interest to Hylsa and should be treated as such for antidumping duty cash deposit purposes. *See Preliminary Results*.

On July 14, 2009, the Department published in the **Federal Register** a notice extending the time limit for these final results to August 17, 2009. *See Circular Welded Non–Alloy Steel Pipe and Tube from Mexico; Extension of Time Limit for Final Results of Antidumping Duty Changed Circumstances Review*, 74 FR 33994 (July 14, 2009).

In the *Preliminary Results*, we stated that interested parties could request a hearing no later than 30 days after the publication of the *Preliminary Results*, submit case briefs to the Department no later than 30 days after the publication of the *Preliminary Results*, and submit rebuttal briefs, limited to the issues raised in those case briefs, five days subsequent to the case briefs' due date. We did not receive any hearing requests or comments on the *Preliminary Results*.

Scope of the Order

The products covered by this order are circular welded non–alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low–pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications.

Standard pipes and tubes may also be used for light load–bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load–bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in this order. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished

scaffolding, and finished conduit. Standard pipe and tube that is dual or triple certified/stenciled that enters the United States as line pipe of a kind used for oil or gas pipelines is also not included in this order.

Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Final Results of Changed Circumstances Review

Based on the information provided by Ternium, the Department's analysis in the *Preliminary Results*, and the fact that interested parties did not submit any briefs during the comment period, the Department hereby determines that Ternium is the successor–in-interest to Hylsa for antidumping duty cash deposit purposes.

Instructions to U.S. Customs and Border Protection

The Department will instruct U.S. Customs and Border Protection to continue to suspend liquidation of all shipments of the subject merchandise produced and exported by Ternium entered, or withdrawn from warehouse, for consumption, on or after the publication date of this notice in the **Federal Register** at 10.38 percent (*i.e.*, Hylsa's cash deposit rate). This deposit requirement shall remain in effect until further notice.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is herby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Tariff Act of 1930, as amended, and 19 CFR 351.216.

Dated: August 11, 2009.

Carole Showers,

Acting Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. E9–19783 Filed 8–17–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ23

Fisheries in the Western Pacific; Marine Conservation Plan for Pacific Insular Areas; American Samoa

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agency decision.

SUMMARY: NMFS announces the approval of a marine conservation plan (MCP) for American Samoa.

DATES: This agency decision is effective August 11, 2009, through August 10, 2012.

ADDRESSES: Copies of the MCP are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, Sustainable Fisheries, NMFS Pacific Islands Region, at 808–944–2108.

SUPPLEMENTARY INFORMATION: Under Section 204(e)(1)(A)of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary) and in consultation with the Council, may negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA) to allow foreign fishing within waters of the U.S. Exclusive Economic Zone (EEZ) adjacent to American Samoa, Guam, or the Northern Mariana Islands, and at the request and with the concurrence of, and in consultation with, the Governor of the Pacific Insular Area to which the PIAFA applies. Section 204(e)(4) of the Magnuson-Stevens Act requires that prior to entering into a PIAFA, the appropriate Governor and the Council shall develop a three-year MCP detailing the uses for any funds collected by the Secretary under the PIAFA.

Any payments received under a PIAFA shall be deposited into the United States Treasury and then covered over to the Treasury of the Pacific Insular Area for which funds were collected. In the case of violations by foreign fishing vessels occurring within the EEZ off any Pacific Insular Area, any amount received by the Secretary which is attributable to fines and penalties imposed under the Magnuson-Stevens Act, including such sums collected from the forfeiture and disposition or sale of property seized subject to its authority, after payment of direct costs of the enforcement action to all entities involved in such action, shall be deposited into the Treasury of the Pacific Insular Area adjacent to the EEZ in which the violation occurred, to be used for fisheries enforcement and for implementation of an MCP. The MCP to be approved by the Secretary must be consistent with the Council's fishery management plans, identify conservation and management objectives (including criteria for determining when such objectives have been met), and prioritize planned marine conservation projects.

At its 144th meeting in March 2009, the Council reviewed and approved the MCP for American Samoa and recommended its submission to the Secretary for approval. NMFS, designee of the Secretary, received the MCP on June 22, 2009.

The American Samoa MCP contains seven broad conservation and management objectives that are consistent with the Council's fishery management plans. The MCP also identifies 37 individual projects that would be funded under a PIAFA. The objectives and projects are listed below, in priority order:

- Objective 1: Promote responsible domestic fisheries development to provide long term economic growth and stability and local food production.

1. Construct dock for commercial fishing vessels;
2. Construct cold storage and fish processing facilities;
3. Purchase ice making equipment to support local and export markets;
4. Develop fish marketing plan;
5. Longline permit, reporting and quota utilization program;
6. Fish handling and HACCP training;
7. Develop American Samoa Fishermen's Cooperative;
8. Deploy fish aggregation devices for non-LL vessels;
9. Upgrade technology for AS bottomfish fleet; and
10. Promote American Samoa as a sport fishing destination through tournaments.

- Objective 2: Support quality research and obtain the most complete scientific information available to assess and manage fisheries.

1. Acquire catch and effort information, and establish online permit and reporting;
2. Conduct reef shark movement study;
3. Improve fisheries data collection through Matai system;
4. Improve fisheries data collection on Ofu, Olosega, and Tau;
5. Study fish spawning in Pala Lagoon;
6. Establish monitoring baseline and economic valuation of mangroves at Nuuuli and Leone Pala;
7. Assess risk of cannery closure on local fishery and ecosystem;
8. Assess risk and determine sustainability of increased commercial fishing due to availability of cold storage; and
9. Set additional regulations after cannery closure.

• Objective 3: Promote ecosystem approach in fisheries management, reduce waste in fisheries, and minimize interactions between fisheries and protected species.

1. Assess bycatch and interactions in local fisheries;
2. Assess distribution and population abundance of marine mammals;
3. Study spatio-temporal patterns in abundance, distribution, and movement of green and hawksbill turtles;
4. Determine reef carrying capacity through modeling;
5. Determine extent and quality of deep reef habitat; and
6. Study feasibility of requiring bycatch mitigation methods.

• Objective 4: Foster broad and direct public participation in the Council's decision-making process.

(No projects for this objective.)

• Objective 5: Recognize the importance of island culture and traditional fishing in managing fishery resources, and foster opportunities for participation.

1. Promote traditional fishing practices;
2. Revise American Samoa fishing regulations; and
3. Enhance enforcement capabilities of village by deputizing community members.

• Objective 6: Promote regional cooperation to manage inter-jurisdictional fisheries.

1. Establish high school marine fisheries resource management course;
2. Develop local marine science integrated curriculum;
3. Develop educational tools on reef shark conservation;
4. Create video documentary of coral reefs and fisheries;
5. Enhance research training capabilities of local staff;
6. Hold regional collaborative meetings with South Pacific Territories; and
7. Promote junior biologist scientific exchange.

• Objective 7: Encourage development of technologies and methods to achieve the most effective level of enforcement and to ensures safety at sea.

1. Install radar to monitor vessel movement; and
2.Improve enforcement of MPAs.

This notice announces that NMFS has determined that the MCP for American Samoa satisfies the requirements of the Magnuson-Stevens Act and has approved the MCP for the three-year period August 11, 2009, through August 10, 2012.

Dated: August 12, 2009.

Kristen C. Koch,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 09–19773 Filed 8–17–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XQ99

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold the following public meetings in September 2009: Meeting with Hawaii Longline Association on management measures for bigeye tuna catch limits in the Western & Central Pacific Ocean and in the Eastern Pacific Ocean (September 14, 2009, 2 p.m. to 5 p.m. HST); Pelagic Plan Team (PPT) meeting on management measures for bigeye tuna catch limits in the Western & Central Pacific Ocean (September 15, 2009, 1 p.m. to 5 p.m. HST); Western Pacific Stock Assessment Review (WPSAR) for Hawaiian Islands bottomfish (October 7, 2009, 1 p.m. to 5 p.m. HST). All meetings will be held in Honolulu, Hawaii and, if necessary, may run be beyond the stated finishing times. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The PPT and WPSAR meetings will be held at the Western Pacific Regional Fishery Management Council Office, Suite 1400, Bishop Street, Honolulu, HI 96813; telephone: (1–808) 522 8220. The meeting with the Hawaii Longline Association will be held at Fresh Island Fish Pier 38, 1135 N. Nimitz Hwy Honolulu, HI 96817; telephone: (1–808) 831–4911.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The meeting with Hawaii Longline Association on management measures for bigeye tuna catch limits in the Western & Central Pacific Ocean and in the Eastern Pacific Ocean will be held at the conference room of Fresh Island Fish, Pier 38, 1135 N. Nimitz Hwy Honolulu, HI, 96817 between 2 and 5 p.m. HST.

The Pelagic Plan Team will be convened at the Council Office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96814 between 1 and 5 p.m. Interested parties who are unable to attend in person will be able to participate via teleconference using the Council's teleconferencing facility (1–888) 482–3560, pass code 5228220).

The Western Pacific Stock Assessment Review for Hawaiian Islands bottomfish will be held at the Council Office 91164 Bishop Street, Suite 1400, Honolulu HI 96813 between 1 p.m. and 5 p.m. HST. Interested parties who are unable to attend in person will be able to participate via teleconference using the Council's teleconferencing facility (1–888) 482–3560, pass code 5228220.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 12, 2009.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 09–19660 Filed 8–17–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Polyester Staple Fiber from Taiwan: Rescission of Antidumping Duty Administrative Review in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 24, 2009, in response to requests from the petitioner, the Department of Commerce published a notice of initiation of administrative review of the antidumping duty order on polyester staple fiber from Taiwan. The period of review is May 1, 2008, through April 30, 2009. The Department of Commerce is rescinding this review in part.

DATES: *Effective Date:* August 18, 2009.

FOR FURTHER INFORMATION: Thomas Schauer or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0410 or (202) 482–4477.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2009, in response to a request from Invista, S.a.r.L. (the petitioner), the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on polyester staple fiber from Taiwan. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 30052 (June 24, 2009). On July 31, 2009, the petitioner withdrew its request for an administrative review of Nan Ya Plastics Corporation. See letter from the petitioner entitled ''Polyester Staple Fiber From Taiwan - Withdrawal of Annual Review Request'' dated July 31, 2009.

Rescission of Review in Part

In accordance with 19 CFR 351.213(d)(1) the Department will rescind an administrative review ''if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' We received the petitioner's withdrawal letter within the 90-day time limit. Because the Department received no other requests for review of Nan Ya Plastics Corporation, the Department is rescinding the review with respect to polyester staple fiber from Taiwan from Nan Ya Plastics Corporation. This rescission is pursuant to 19 CFR 351.213(d)(1). The Department will issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

We are issuing and publishing this rescission in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 12, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–19802 Filed 8–17–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0638–XI68

Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the California Department of Transportation (CALTRANS) to take small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, by harassment, incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge (SF-OBB) in California.

DATES: This authorization is effective from August 14, 2009 until August 13, 2010.

ADDRESSES: A copy of the application, IHA, and/or a list of references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

FOR FURTHER INFORMATION CONTACT: Shane Guan, NMFS, (301) 713–2289, ext 137, or Monica DeAngelis, NMFS, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined egligible impact in 50 CFR 216.103 as ''..an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On March 3, 2008, CALTRANS submitted a request to NOAA requesting renewal of an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), harbor porpoises (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) incidental to construction of a replacement bridge for the East Span of the SF-OBB, in San Francisco Bay (SFB), California. An IHA was previously issued to CALTRANS for this activity on May 2, 2007 and it expired on May 1, 2008 (72 FR 25748, May 7, 2007). However, no pile driving activities were conducted during that period. A detailed description of the SF-OBB project was provided in the November 14, 2003 (68 FR 64595) **Federal Register** notice of an earlier IHA and is not repeated here. Please refer to that **Federal Register** notice.

On June 2, 2008, CALTRANS provided an update on the proposed pile driving activities planned for the 2008 - 2009 season. In its update, CALTRANS states that pile driving for the 2009 construction would be driving the 42 - 48 in (0.17 - 0.19 m) diameter temporary piles, as opposed to the 5.9 - 8.2 ft (1.8 - 2.5 m) diameter permanent piles. Therefore, the noise from pile driving of these temporary piles would be far less than from previous pile driving activities. In addition, CALTRANS indicates that deployment of an air bubble curtain would not be feasible for the driving of these smaller temporary piles due to the complexity of the driving frames. A **Federal Register** notice of receipt of the application, the modification of mitigation measures, and proposed IHA was published on July 3, 2008 (73 FR 38180), along with new safety zones without an air bubble system. On September 15, 2008, CALTRANS provided certain acoustic measures for testing pile driving of temporary piles without air bubble curtain system.

On January 29, 2009, CAlTRANS provided NMFS with a detailed description of the SF-OBB construction work and all acoustic measurements without air bubble curtains (CALTRANS, 2009). Specifically, the modified proposed construction activities include driving of temporary piles at Temporary Towers D, F and G which are necessary for the erection of falsework to support the Self-Anchored Suspension Span (SAS) portion of the SF-OBB project. Each tower has a north and south node. All three Temporary Towers are located to the east of Yerba Buena Island (YBI). Temporary Tower D is located approximately 60 m (197 ft) from the eastern shoreline of YBI. Temporary Tower F is located approximately 100 m (328 ft) east of Temporary Tower D. Temporary Tower G is located approximately 100 m (328 ft) east of Temporary Tower F.

In addition, CALTRANS indicated that certain piles would be installed by using both vibratory and impact hammers, instead of only impact hammers as in the previous IHAs. Unlike pile driving using impact hammers which involves the repeated striking of the head of a steel pile by a double-acting hydraulic hammer, vibratory pile driving was achieved by means of a variable eccentric vibrator attached to the head of the pile. The pile driving machine is lifted and positioned over the pile by means of an excavator or crane, and is fastened to the pile by a clamp and/or bolts. The majority of piles were initially driven into the substrate by vibration, over a period of several minutes.

The use of vibratory pile driving has the benefit of having lower impact to anadramous fish species in the vicinity of the proposed project area, since the instantaneous sound pressure levels are lower when compared to noise from impact hammers. Therefore, fish species in close vicinity of the project area are less likely to suffer from mortality and injury (Hawkins, 2006). Empirical hydroacoustic measurements of impact and vibratory hammers during CALTRANS testing pile driving in San Francisco Bay on October 23, December 9, and December 11, 2008, are shown in Table 1. Hydroacoustic monitors used data collected on December 9 and December 11, 2008, determine the distance of the 120 dB isopleths. At 1,900 m from the vibratory pile driving, sound levels are in the low 120 dB rms range. At this distance pile driving was audible but not measurable due to ambient noise (CALTRANS, 2009).

Both impact and vibratory pile driving is expected to be short-term in duration. Pile driving conducted to collect hydroacoustic data showed that the vibration of the bottom segment of each pile took approximately 3 minutes; the vibration of the top segment of each pile took approximately 8 minutes; and that the impact driving of the top segment of each pile lasted an average of 15 minutes. On average, it took about 25 minutes of driving time to install each temporary pile (CALTRANS, 2009). The entire project is expected to be completed by the end of 2009.

Please refer to the CALTRANS memos for a detailed description of the modification of the proposed construction activities.

TABLE 1. ROOT-MEAN-SQUARE ISOPLETHS BASED ON HYDROACOUSTIC MONITORING IN SAN FRANCISCO BAY BY ILLINGWORTH & RODKIN, INC. (CALTRANS, 2009)

Sound Level (dB re 1 μPa rms)	120*	160* *	180* *	190* *
Radius for Vibratory Pile Driving	1,900 m	250 m	15 m	does not exist
Radius for Impact Pile Driving	NA	1,000 m	235 m	95 m

* Hydroacoustic measurements for received level at 120 dB re 1 μPa rms from vibratory pile driving were collected on December 9 and 11, 2008.

** Hydroacoustic measurements for received levels at 160, 180, and 190 dB re 1 μPa rms from vibratory pile driving were collected on October 23, 2008.

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on July 3, 2008 (73 FR 38180). During the 30 ay public comment period, the Marine Mammal Commission (Commission) provided the only comment.

Comment: The Commission states that it recommends that NMFS grant the applicant request, provided that the monitoring and mitigation activities described in the NMFS previous **Federal Register** notices are carried out as described.

Response: NMFS agrees with the Commission recommendation, and all monitoring and mitigation measured described in the previous **Federal Register** notice (73 FR 38180; July 3, 2008) are required in the current IHA.

Description of the Marine Mammals Potentially Affected by the Activity

General information on the marine mammal species found in California waters can be found in Caretta *et al.* (2007), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2007.pdf*. Refer to that document for information on these species.

The marine mammals most likely to be found in the SF-OBB area are the California sea lion, Pacific harbor seal, and harbor porpoise. From December through May gray whales may also be present in the SF-OBB area. Information on California sea lion, harbor seal, and gray whale was provided in the November 14, 2003 (68 FR 64595), **Federal Register** notice; information on harbor porpoise was provided in the January 26, 2006 (71 FR 4352), **Federal Register** notice.

Potential Effects on Marine Mammals and Their Habitat

CALTRANS and NMFS have determined that open-water pile driving, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving could potentially harass those few pinnipeds that are in the water close to the project site, whether their heads are above or below the surface.

Based on airborne noise levels measured and on-site monitoring conducted during 2004 under the previous IHAs, noise levels from the East Span project did not result in the harassment of harbor seals hauled out on Yerba Buena Island (YBI). Also, noise levels from the East Span project are not expected to result in harassment of the sea lions hauled out at Pier 39, as airborne and waterborne sound pressure levels (SPLs) would attenuate to levels below where harassment would be expected by the time they reach that haul-out site, 5.7 km (3.5 miles) from the project site. Therefore, no pinniped hauled out would be affected as a result of the proposed pile-driving. A detailed description of the acoustic measurements is provided in the 2004 CALTRANS marine mammal and acoustic monitoring report for the same activity (CALTRANS 2005). With the modification of the proposed construction activities involving smaller piles, NMFS believes that the in-air noise would only become less intense, therefore, no pinniped hauled out would be affected.

In contrary to impact pile driving, which the striking hammers produce intense bangs with rapid raise of acoustic energy within extremely short pulse duration, noises generated by vibratory pile driving have lower instantaneous SPL but longer duration (HDR Alaska *et al.*, 2006).

However, since the transient sound produced by vibratory pile driving has longer duration then impact pile driving pulses, it is arguable that a single batch of vibratory pile driving noise could contain more acoustic energy than a single impact hammer pulse in terms of sound exposure levels (SEL). To mitigate the low level behavioral impact from this prolonged transient noise, currently NMFS uses the received level of 120 dB re 1 μPa rms as the onset of behavioral harassment for marine mammals from vibratory pile driving noise. In comparison, NMFS uses the received level of 160 dB re 1 μPa rms as the onset of behavioral harassment for marine mammals from the much shorter impulse, or noise from impact pile driving.

Since the modified proposed SF-OBB construction project would be installing smaller temporary piles with no air bubble curtain, and since the pile driving activities would be performed by using both impact and vibratory hammers, NMFS conducted an comparison of isopleths from large foundation pile driving activities using an air bubble curtain system (Table 2) with the current testing pile driving without an air bubble curtain by both impact and vibratory pile driving (Table 1). The acoustic data used from the foundation pile driving were provided by CALTRANS (CALTRANS, 2005). The comparison shows that the radius for the zone of influence (ZOI) for Level B behavioral harassment, as defined by marine mammals exposed to received SPL (impulse) of 160 dB re 1 μPa rms, for the previous larger pile driving activities using air bubble curtain was about 2,000 m. This distance is approximately the same as the radius for the proposed vibratory pile driving for the smaller temporary piles at received SPL of 120 dB re 1 μPa rms, a level thought may cause Level B behavioral harassment to marine mammals by vibratory pile driving. Therefore, NMFS concludes that the potential impacts to marine mammals from the proposed SF-OBB construction project involving installation of smaller temporary piles using both impact and vibratory hammers without deployment of an air bubble curtain system are the same as the previous construction activities of installation larger foundation piles using impact hammers and air bubble curtain system as a mitigation measure.

TABLE 2. SUMMARY OF HYDROACOUSTIC MEASUREMENTS REPORTED AS DB RE 1 μPA – PIER E3W MARINE MAMMAL HYDROACOUSTIC CHARACTERIZATION, 10/13/2004 (ADOPTED FROM CALTRANS, 2005)

Position	Water Depth	South Pile Hammer: Menck 1,700		North Pile Hammer: Menck 1,700	
		RMS impulse	Peak	RMS impulse	Peak
50m West (made by Caltrans)*	--	177	186		
100m West*	~12–14m	175	185	173	182
100m North	~12m	174	183		

TABLE 2. SUMMARY OF HYDROACOUSTIC MEASUREMENTS REPORTED AS dB RE 1 μPA – PIER E3W MARINE MAMMAL HYDROACOUSTIC CHARACTERIZATION, 10/13/2004 (ADOPTED FROM CALTRANS, 2005)—Continued

Position	Water Depth	South Pile Hammer: Menck 1,700		North Pile Hammer: Menck 1,700	
		RMS impulse	Peak	RMS impulse	Peak
100m South**	~12m			174	182
500m West	~8m	174	182		
500m South	~10m	167	177	177	188
1000m North	14 m			169	178
1000m South	~10m	169	176		
2000m North	11 m			162	169
2000m South	~10m	<140	<150		
4400m North	>12m			<130	<150
4400m South	>12 m	<130	<150		

*Continuous measurement. All others are spot measurements of at least 5 minutes in duration.
**Many obstructions including Pier E3E.

For reasons provided in greater detail in NMFS November 14, 2003 (68 FR 64595) **Federal Register** notice and in CALTRANS June 2004, January 2005 annual monitoring reports, and marine mammal observation memoranda between February and September, 2006, the proposed construction would result in harassment of only small numbers of harbor seals and would not result in more than a negligible impact on marine mammal stocks and their habitat. This was achieved by implementing a variety of monitoring and mitigation measures including marine mammal monitoring before and during pile driving, establishing safety zones, ramping up pile driving, and deploying air bubble curtain to attenuate underwater pile driving sound. However, with no air bubble curtain being deployed for the proposed pile driving of smaller temporary piles, additional cautions must be exercised to ensure that no marine mammals will be taken by Level A (i.e., injury) harassment. Based on the pinniped distribution within the proposed project area and prior monitoring reports, NMFS estimates that up to 5 harbor seals and 5 California sea lions could be taken by Level B behavioral harassment as a result of the proposed temporary pile driving project.

Short-term impacts to habitat may include minimal disturbance of the sediment where the channels are dredged for barge access and where individual bridge piers are constructed. Long-term impacts to marine mammal habitat will be limited to the footprint of the piles and the obstruction they will create following installation. However, this impact is not considered significant as the marine mammals can easily swim around the piles of the new bridge, as they currently swim around the existing bridge piers.

Mitigation Measures

For the issuance of the IHA for the planned 2008 2009 SF-OBB planned construction activities to reduce adverse impacts to marine mammals to the lowest extent practicable, NMFS requires the following mitigation measures to be implemented.

Establishment of Safety/Buffer Zones

CALTRANS indicated that for the planned 2008 2009 SF-OBB construction pile driving activities, an air bubble curtain cannot be deployed due to the complexity of the driving frame. Therefore, proposed shutdown safety zones corresponding to where a marine mammal could be injured would be established based on empirical field measurements of pile driving sound levels.

These safety zones shall include all areas where the underwater SPLs are anticipated to equal or exceed 190 dB re 1 microPa rms (impulse) for pinnipeds and 180 dB re 1 microPa rms (impulse) for gray whales and harbor porpoises, and be monitored at all times when pile driving is underway. No additional safety zone will be established for vibratory pile driving since the measured source levels will not exceed the 180 and 190 dB re 1 microPa.

Observers on boats shall survey the safety zone to ensure that no marine mammals are seen within the zone before pile driving of a pile segment begins. If marine mammals are found within the safety zone, pile driving of the segment shall be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor shall wait 15 minutes and if no marine mammals are seen by the observer in that time it will be assumed that the animal has moved beyond the safety zone. This 15–minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994), and the mean diving duration for harbor porpoises ranges from 44 to 103 seconds (Westgate *et al.*, 1995). However, due to the limitations of monitoring from a boat, there can be no assurance that the zone will be devoid of all marine mammals at all times.

Once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying the Bay. If pile driving stops and then resumes, it would potentially have to occur for a longer time and at increased energy levels. In sum, this would simply amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment lengths and wall thickness have been specially designed so that when work is stopped between segments (but not during a single segment), the pile tip is never

resting in highly resistant sediment layers. Therefore, because of this operational situation, if seals, sea lions, or harbor porpoises enter the safety zone after pile driving of a segment has begun, pile driving will continue and marine mammal observers will monitor and record marine mammal numbers and behavior. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously in this document.

Soft Start

It should be recognized that although marine mammals will be protected from Level A harassment (i.e., injury) through marine mammal observers monitoring a 190–dB safety zone for pinnipeds and 180–dB safety zone for cetaceans, mitigation may not be 100 percent effective at all times in locating marine mammals. Therefore, in order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, CALTRANS shall also oft start the hammer prior to operating at full capacity. CALTRANS typically implements a oft start with several initial hammer strikes at less than full capacity (i.e., approximately 40–60 percent energy levels) with no less than a 1 minute interval between each strike. Similar levels of noise reduction are expected underwater. Therefore, the contractor shall initiate pile driving hammers with this procedure in order to allow pinnipeds or cetaceans in the area to voluntarily move from the area. This should expose fewer animals to loud sounds both underwater and above water noise. This would also ensure that, although not expected, any pinnipeds and cetaceans that are missed during safety zone monitoring will not be injured.

Compliance with Equipment Noise Standards

To mitigate noise levels and, therefore, impacts to California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, all construction equipment shall comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment shall have noise control devices no less effective than those provided on the original equipment.

Monitoring

The following monitoring measures are required for the proposed SF-OBB construction activities.

Visual Observations

Safety zone monitoring shall be conducted during driving of all open-water piles without cofferdams and with cofferdams when underwater SPLs reach 190 dB RMS or greater. Monitoring of the pinniped and cetacean safety zones shall be conducted by a minimum of three qualified NMFS-approved observers for each safety zone. One three-observer team shall be required for the safety zones around each pile driving site, so that multiple teams shall be required if pile driving is occurring at multiple locations at the same time. The observers shall begin monitoring at least 30 minutes prior to startup of the pile driving. Most likely observers will conduct the monitoring from small boats, as observations from a higher vantage point (such as the SF-OBB) are not practical. Pile driving shall not begin until the safety zones are clear of marine mammals. However, as described in the Mitigation section, once pile driving of a segment begins, operations will continue uninterrupted until the segment has reached its predetermined depth. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously (see Mitigation). Monitoring shall continue through the pile driving period and shall end approximately 30 minutes after pile driving has been completed. Biological observations shall be made using binoculars during daylight hours.

In addition to monitoring from boats, during open-water pile driving, monitoring at one control site (i.e., harbor seal haul-out sites and the waters surrounding such sites not impacted by the East Span Project's pile driving activities, e.g., Mowry Slough) shall be designated and monitored for comparison. Monitoring shall be conducted twice a week at the control site whenever open-water pile driving is being conducted. Data on all observations shall be recorded and shall include items such as species, numbers, behavior, details of any observed disturbances, time of observation, location, and weather. The reactions of marine mammals shall be recorded based on the following classifications that are consistent with the Richmond Bridge Harbor Seal survey methodology (for information on the Richmond Bridge authorization, see 68 FR 66076, November 25, 2003): (1) No response, (2) head alert (looks toward the source of disturbance), (3) approach water (but not leave), and (4) flush (leaves haul-out site). The number of marine mammals under each disturbance reaction shall be recorded, as well as the time when seals re-haul after a flush.

Acoustical Observations

Airborne noise level measurements have been completed and underwater environmental noise levels will continue to be measured as part of the East Span Project. The purpose of the underwater sound monitoring is to establish the safety zone of 190 dB re 1 micro-Pa RMS (impulse) for pinnipeds and the safety zone of 180 dB re 1 micro-Pa RMS (impulse) for cetaceans. Monitoring will be conducted during the driving of the last half (deepest pile segment) for any given open-water pile. One pile in every other pair of pier groups will be monitored. One reference location will be established at a distance of 100 m (328 ft) from the pile driving. Sound measurements will be taken at the reference location at two depths (a depth near the mid-water column and a depth near the bottom of the water column but at least 1 m (3 ft) above the bottom) during the driving of the last half (deepest pile segment) for any given pile. Two additional in-water spot measurements will be conducted at appropriate depths (near mid water column), generally 500 m (1,640 ft) in two directions either west, east, south or north of the pile driving site will be conducted at the same two depths as the reference location measurements. In cases where such measurements cannot be obtained due to obstruction by land mass, structures or navigational hazards, measurements will be conducted at alternate spot measurement locations. Measurements will be made at other locations either nearer or farther as necessary to establish the approximate distance for the safety zones. Each measuring system shall consist of a hydrophone with an appropriate signal conditioning connected to a sound level meter and an instrument grade digital audiotape recorder (DAT). Overall SPLs shall be measured and reported in the field in dB re 1 micro-Pa rms (impulse). An infrared range finder will be used to determine distance from the monitoring location to the pile. The recorded data will be analyzed to determine the amplitude, time history and frequency content of the impulse.

Reporting

Under previous IHAs, CALTRANS submitted weekly marine mammal monitoring reports for the time when pile driving was commenced. In August 2006, CALTRANS submitted its Hydroacoustic Measurement at Piers T1 and E2 report. This report is available by contacting NMFS (see **ADDRESSES**) or on the Web at *http://biomitigation.org*.

Under the proposed IHA, coordination with NMFS will occur on a weekly basis. During periods with open-water pile driving activity, weekly monitoring reports will be made available to NMFS and the public at *http://biomitigation.org*. These weekly reports will include a summary of the previous week monitoring activities and an estimate of the number of seals and sea lions that may have been disturbed as a result of pile driving activities.

In addition, CALTRANS will to provide NMFS' Southwest Regional Administrator with a draft final report within 90 days after completion of the westbound Skyway contract and 90 days after completion of the Suspension Span foundations contract. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If no comments are received from NMFS Southwest Regional Administrator within 30 days, the draft final report will be considered the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) for the take of marine mammals incidental to construction of the East Span of the SF-OBB and made a Finding of No Significant Impact (FONSI) on November 4, 2003. Due to the modification of part of the construction project and the mitigation measures, NMFS reviewed additional information from CALTRANS regarding empirical measurements of pile driving noises for the smaller temporary piles without an air bubble curtain system and the use of vibratory pile driving. NMFS prepared a Supplemental Environmental Assessment (SEA) and analyzed the potential impacts to marine mammals that would result from the modification of the action. A Finding of No Significant Impact (FONSI) was signed on August 5, 2009. A copy of the SEA and FONSI is available upon request (see **ADDRESSES**).

Endangered Species Act (ESA)

On October 30, 2001, NMFS completed consultation under section 7 of the ESA with the Federal Highway Administration (FHWA) on the CALTRANS' construction of a replacement bridge for the East Span of the SF-OBB in California. Anadromous salmonids are the only listed species which may be affected by the project. The finding contained in the Biological Opinion was that the proposed action at the East Span of the SF-OBB is not likely to jeopardize the continued existence of listed anadromous salmonids, or result in the destruction or adverse modification of designated critical habitat for these species. Listed marine mammals are not expected to be in the area of the action and thus would not be affected.

NMFS proposed issuance of an IHA to CALTRANS constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. The effects of the activities on listed salmonids were analyzed during consultation between the FHWA and NMFS, and the underlying action has not changed from that considered in the consultation. Therefore, the effects discussion contained in the Biological Opinion issued to the FHWA on October 30, 2001, pertains also to this action. NMFS has determined that issuance of an IHA for this activity does not lead to any effects on listed species apart from those that were considered in the consultation on FHWA's action.

Determinations

For the reasons discussed in this document and in previously identified supporting documents, NMFS has preliminarily determined that the impact of pile driving and other activities associated with construction of the East Span Project should result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and potentially gray whales that inhabit or visit SFB in general and the vicinity of the SF-OBB in particular. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to determine that this action will have a negligible impact on California sea lion, Pacific harbor seal, harbor porpoises, and gray whale populations along the California coast.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. The activity will not have an unmitigable adverse impact on subsistence uses of marine mammals described in MMPA section 101(a)(5)(D)(i)(II).

Authorization

NMFS has issued an IHA to CALTRANS for the potential harassment of small numbers of harbor seals, California sea lions, harbor porpoises, and gray whales incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 12, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–19771 Filed 8–17–09; 8:45 am]

BILLING CODE 3510–22–S

COURT SERVICES AND OFFENDER SUPERVISION AGENCY

Privacy Act of 1974; System of Records; Notice

AGENCY: Court Services and Offender Supervision Agency.

ACTION: Notice.

Authority: The Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget (OMB) Circular No. A–130.

SUMMARY: CSOSA is proposing to establish blanket routine uses in order to: (1) Better meet our agency mission, particularly to increase public safety, prevent crime, and reduce recidivism by enhancing information sharing with our law enforcement partners; and (2) lessen the administrative burden on CSOSA by reducing the number of single requests for information from our law enforcement partners.

Unless indicated otherwise by another public notice, these blanket routine uses will apply to following CSOSA systems of records:

CSOSA–9 Supervision Offender Case File
CSOSA–11 Supervision & Management Automated Record Tracking

DATES: CSOSA must forward this Notice to the Office of Management and Budget (OMB) ten (10) days before CSOSA submits the Notice to the **Federal Register**.

CSOSA must receive public comments on or before September 17, 2009.

This Notice will be effective October 1, 2009 unless public comments are received that warrant a contrary determination.

ADDRESSES: Send comments to CSOSA, Office of the General Counsel, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Rorey Smith, Assistant General Counsel, 202–220–5797.

SUPPLEMENTARY INFORMATION: None.

CSOSA Blanket Routine Uses

Subject: Blanket Routines Uses Applicable to More than One CSOSA Privacy Act System of Records.

Applicability: The following routine uses describe those types of disclosures which are common to more than one CSOSA Privacy Act system of records for which CSOSA is establishing as ''blanket'' routine uses. These blanket routine uses supplement but do not replace any routine uses that are separately published in the notices of individual record systems to which the blanket routine uses apply.

Routine Uses of Records Maintained in CSOSA Systems, Including Categories of Users and the Purposes of Such Uses: System records may be disclosed to the following persons or entities under the circumstances or for the purposes described below to the extent such disclosures are compatible with the purposes for which the information was collected.

CSOSA–9 (Supervision Offender Case File)

A. To any civil or criminal law enforcement agency, whether Federal, State, or local or foreign, which requires information relevant to a civil or criminal investigation to the extent necessary to accomplish their assigned duties unless prohibited by law or regulation.

B. To a Federal, State, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency.

C. To the appropriate Federal, State, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation unless prohibited by law or regulation.

CSOSA–11 (Supervision & Management Automated Record Tracking)

A. To any civil or criminal law enforcement agency, whether Federal, State, or local or foreign, which requires information relevant to a civil or criminal investigation to the extent necessary to accomplish their assigned duties.

B. To the appropriate Federal, State, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

C. To a Federal, State, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency.

D. To Federal, State, and local authorities participating in the JUSTIS database system through database access to limited information to permit a determination of an individual's status under-supervision and the assigned supervision officer to the extent necessary for the accomplishment of the participating authorities' assigned duties.

The participants in the JUSTIS database that will have limited access to CSOSA's SMART information are the Federal Bureau of Prisons, the DC Department of Corrections, the DC Superior Court, the Metropolitan Police Department, the DC Pretrial Services Agency, the United States Attorney's Office for the District of Columbia, the United States Marshals Service, and the United States Parole Commission.

CSOSA Records Systems to Which These Blanket Routine Uses Do Not Apply: These blanket routine uses shall not apply to the following CSOSA Privacy Act systems of records. Only those routine uses established in the records system notice for the particular system shall apply.

CSOSA–1—Public Affairs File
CSOSA–2—Background Investigation
CSOSA–3—Employee Credential System
CSOSA–4—Proximity Card System
CSOSA–5—Budget System
CSOSA–6—Payroll and Leave Records
CSOSA–7—Time and Attendance Records
CSOSA–8—Training Management System
CSOSA–10—Pre-sentence Investigations
CSOSA–12—Recidivism Tracking Database
CSOSA–13—Freedom of Information-Privacy Act System
CSOSA–15—Substance Abuse Treatment Database
CSOSA–16—Screener Database
CSOSA–17—Office of Professional Responsibility Record
CSOSA–18—Sex Offender Registry
CSOSA–19 —Drug Free Workplace Program

Dated: August 10, 2009.

Patricia A. Capers,

Records Manager.

[FR Doc. E9–19739 Filed 8–17–09; 8:45 am]

BILLING CODE 3129–04–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 19, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility,

and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 12, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New Collection.

Title: Beginning Teacher Longitudinal Study (BTLS) 2009–2012.

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 1,891.

Burden Hours: 513.

Abstract: The New Teacher Longitudinal Survey will follow a sample of public school teachers who were in their first year of teaching in 2007–08. These teachers were first interviewed as part of the 2007–08 Schools and Staffing Survey (SASS) and were also part of the 2008–09 Teacher Follow-up Survey. They will be contacted again in 2010 as part of a second follow-up. Following this small subset of the SASS sample for at least a decade will provide much needed data on teachers' careers, attrition, and mobility.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4068. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–19769 Filed 8–17–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board. (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat.770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: September 23, 2009, 2 to 3 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Office of Commercialization and Project Management, Energy Efficiency Division, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303–275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Discuss ways STEAB can support DOE's implementation of the Economic Recovery Act, and update members on the Board's routine business matters.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org.*

Issued at Washington, DC, on August 12, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–19764 Filed 8–17–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Privacy Act of 1974; Notice To Amend an Existing System of Records

AGENCY: U.S. Department of Energy.

ACTION: Notice.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a, and the Office of Management and Budget (OMB) Circular A–130, the Department of Energy (DOE) is publishing notice of a proposed amendment to an existing system of records. DOE proposes to amend the system of records DOE–3 ''Employee Concerns Program Records.'' This notice (i) will expand an existing routine use to permit the disclosure of certain information to the Nuclear Regulatory Commission, and (ii) add an additional system location.

DATES: The proposed amendment to this existing system of records will become effective without further notice on October 2, 2009 unless DOE receives adverse comments and determines that this amendment should not become effective on that date.

ADDRESSES: Written comments should be directed to William A. Lewis, Jr., Deputy Director, Office of Civil Rights and Diversity, ED–4, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Jerry Hanley, Chief Privacy Officer, Office of Information Resources, MA–90, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5955; Isiah Smith, Deputy Assistant General Counsel for General Law, GC–77, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–8618; William A. Lewis, Jr., Deputy Director, Office of Civil Rights and Diversity, ED–4, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–6530.

SUPPLEMENTARY INFORMATION: This notice proposes two amendments to DOE–3 Employee Concerns Program Records. The first amendment concerns Routine Use # 5, which allows a record to be disclosed as a routine use to DOE contractors in the performance of their contracts and to their respective officers and employees who have a need for the record in the performance of their duties. This notice proposes to add a similar sentence allowing a record to be disclosed as a routine use to the Nuclear Regulatory Commission and its respective officers and employees who have a need for the record in the performance of their duties. Disclosure

to the NRC is pursuant to the NRC's regulatory oversight over some of DOE's activities and is compatible with the purpose for which the information is being collected and maintained, *i.e.,* to ensure that DOE provides an avenue through which DOE workers may raise concerns relating to the safe and sound operation of DOE facilities. The second amendment adds the following system location: U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208. DOE is submitting the report required by OMB Circular A–130 concurrently with the publication of this notice. The text of this notice contains information required by the Privacy Act, 5 U.S.C. 552a(e)(4).

Issued in Washington, DC, on August 11, 2009.

Ingrid Kolb,

Director, Office of Management and Budget.

DOE–3

SYSTEM NAME:

Employee Concerns Program Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26507–0880.

U.S. Department of Energy, National Energy Technology Laboratory (Tulsa), One West Third Street, Suite 1400.

U.S. Department of Energy, National Energy Technology Laboratory (Alaska) 2175 University Avenue South, Suite 201, Fairbanks, AK 99709.

U.S. Department of Energy, National Energy Technology Laboratory, 1450 Queen Avenue, SW., Albany, OR 97321–2198.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Cincinnati, OH 45202.

U.S. Department of Energy, Office of River Protection, P.O. Box 550, MS A1–61, Richland, WA 99352.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621 Portland, OR 97208.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE employees including National Nuclear Security Administration (NNSA) employees and DOE contractor and subcontractor employees who file concerns or complaints with the DOE Employee Concerns Program offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee concerns, informal whistleblower reprisal complaints, names, social security numbers, work and home addresses and telephone numbers, job titles, series, grade or pay levels; organization; supervisors' names and telephone numbers; copies of employee records such as personnel actions, performance appraisals, pay and leave records and security clearance documents; management reports; witness statements; affidavits; checklists; notes; and relevant correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* 42 U.S.C. 2201(p); 42 U.S.C. 7254; 42 U.S.C. 5801(a).

RETRIEVABILITY:

Records are retrieved by name and/or Social Security number.

PURPOSE(S):

For those records described in Categories of Records in the System, such records are maintained and used by the Department to document and resolve employee concerns about environmental, safety and health issues, employee-supervisor relations, work processes and practices, and other work-related issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to union officials acting in their official capacity as a representative of the grievant or affected employees under 5 U.S.C. Chapter 71.

2. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member of Congress with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

3. A record from the system may be disclosed as a routine use to the appropriate local, State or Federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

4. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) a person representing the Department or assisting in such representation; (2) others involved in the matter, their representatives and persons assisting such persons; and (3) witnesses, potential witnesses, their representatives and assistants, and any other persons possessing information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

5. A record from this system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. A record from this system may also be disclosed as a routine use to the Nuclear Regulatory Commission and its

officers and employees who have a need for the record in the performance of their duties. Recipients of this information pursuant to this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

6. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by the name of the concerned employee or complainant or other personal identifier, such as social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE records schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Employee Concerns, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers of the Office of Employee Concerns at the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the Correlation. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records generally are kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The concerned employee or complainant; applicable management officials; program office records; and congressional offices.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The system is exempt under subsections 552a(k)(1), (2) and (5) of the Privacy Act to the extent that information within the system meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3); 5 U.S.C. Sec. 552a(d); 5 U.S.C. 552a(e)(1) of the Act; see the Department's Privacy Act regulation at 10 CFR Part 1008.

[FR Doc. E9–19768 Filed 8–17–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Variance for Certain Requirements Under the Department of Energy's National Environmental Policy Act Implementing Procedures for the Deployment of Combined Heat and Power, District Energy Systems, Waste Energy Recovery Systems, and Efficient Industrial Equipment Initiative

AGENCY: U.S. Department of Energy.

ACTION: Notice of Variance.

SUMMARY: This notice announces the Department of Energy's (DOE's) decision, pursuant to 10 CFR 1021.343(c), that it is in the interest of public welfare to grant a variance from certain requirements of its National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR part 1021) in regard to the review of applications under the Deployment of Combined Heat and Power, District Energy Systems, Waste Energy Recovery Systems, and Efficient Industrial Equipment Initiative funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act). The variance is limited to certain requirements identified in 10 CFR 1021.216, *Procurement, Financial Assistance, and Joint Ventures*. The variance in no way affects the requirement to prepare an environmental assessment or environmental impact statement, as applicable, for projects selected for funding. The merit review of applications in response to this funding opportunity will include consideration of the potentially significant environmental impacts of the projects proposed for funding that are within the competitive range. By providing this variance, DOE can reduce the time needed to select projects for possible future funding consistent with the sense of urgency underpinning the Recovery Act.

DATES: *Effective date:* August 18, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. R. Paul Detwiler, Director, Office of Project Facilitation and Compliance, National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940 or *Ralph.Detwiler@netl.doe.gov*.

SUPPLEMENTARY INFORMATION:

Background

The purposes of the Recovery Act are to: (1) Preserve and create jobs and promote economic recovery; (2) assist those most impacted by the recession; (3) provide investments needed to increase economic efficiency by

spurring technological advances in science and health; (4) invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and (5) stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Federal departments must manage and expend funds made available through the Recovery Act to achieve these purposes, ''including commencing expenditures and activities as quickly as possible consistent with prudent management.'' (Recovery Act, section 3)

In the Recovery Act, the Congress appropriated $16.8 billion for DOE to further energy efficiency and renewable energy. (Recovery Act, Division A, Title IV) DOE decided to make $156 million of these funds available for grants to entities that will deploy sustainable energy infrastructure projects and energy efficient industrial technologies in four areas: combined heat and power systems; district energy systems; industrial waste energy recovery; and efficient industrial equipment. To implement this decision, DOE issued a competitive financial assistance funding opportunity announcement on June 1, 2009. (*Recovery Act: Deployment of Combined Heat and Power (CHP) Systems, District Energy Systems, Waste Energy Systems, and Efficient Industrial Equipment*, DE–FOA–0000044).

This funding opportunity is critical to the deployment of new and replacement systems and equipment that are highly efficient and that make use of energy that would otherwise be wasted. In the areas of combined heat and power systems and district energy systems, new systems must have a thermal efficiency of at least 60 percent; replacement systems must provide an efficiency increase of at least 25 percent compared to the system being replaced. In the area of waste energy recovery systems, new systems must have a minimum efficiency of 30 percent; replacement systems must provide a 25 percent increase over the replaced system. As to energy efficient industrial equipment, applicants must deploy technologies that result in a minimum efficiency improvement of 25 percent. Deployment of these systems and equipment will produce substantial energy savings and aid in the nation's economic recovery by creating or retaining jobs in the United States.

The funding opportunity announcement is a competitive solicitation. DOE has received more than 225 applications, which is more than it expects to be able to fund. DOE is now reviewing the merits of the applications in order to select those to which it may provide funding. One aspect of the merit review process is consideration of potential adverse environmental impacts. As part of the application process, each applicant was required to complete an environmental questionnaire; the environmental information in these questionnaires will be considered during the merit review. Consideration of potential environmental impacts will be facilitated by the participation of DOE NEPA Compliance Officers, who will assist the merit review panel in preparation of the Merit Review Report, and the selection official in his consideration of the report and of the proposals deemed suitable for funding.

DOE's NEPA implementing procedures, at 10 CFR 1021.216, establish a process for the consideration of potential environmental impacts prior to selection. The central element of this process is preparation by DOE of an environmental critique containing, among other things, a ''brief comparative evaluation of the potential environmental impacts of the offers, which will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects that cannot be avoided, areas where important environmental information is incomplete and unavailable, unresolved environmental issues and practicable mitigating measures not included in the offeror's proposal.'' (10 CFR 1021.216(g)(3)) This environmental critique forms the basis for an environmental synopsis, which is made available to the public and is incorporated into any environmental assessment or environmental impact statement prepared. (10 CFR 1021.216(h)) Another feature of the environmental critique is that, in addition to information provided by the applicant, ''it may also evaluate supplemental information developed by DOE as necessary for a reasoned decision.'' (10 CFR 1021.216(f)) This contrasts with the merit review process, which is limited to information provided in the application. Some other components of an environmental critique (*e.g.*, brief discussion of the purpose of the funding opportunity and of the applicants' proposals) repeat information that is already part of the Merit Review Report that is prepared for the selection official. (The Merit Review Report is not publicly available.)

DOE's existing NEPA regulations provide for certain variances ''soundly based on the interests of national security or the public health, safety, or welfare.'' (10 CFR 1021.343(c)) Any such variance must have the advance written approval of the General Counsel,[1] and DOE must publish a notice in the **Federal Register** specifying the variance granted and the reasons.

Variance

Pursuant to 10 CFR 1021.343(c), I have determined that granting a variance from the requirements of 10 CFR 1021.216(c) through (h) with respect to the Department's funding opportunity for the Deployment of Combined Heat and Power Systems, District Energy Systems, Waste Energy Systems, and Efficient Industrial Equipment (DE–FOA–0000044) is soundly based on the interests of public welfare. Expediting the award of funding to promising proposals will accelerate deployment of sustainable energy infrastructure and energy efficient industrial technologies that will reduce energy use. In addition, it will facilitate the nation's economic recovery by creating and retaining jobs.

I have concluded that the Department's process for making these funding awards will provide the selecting official with sufficient information regarding potential environmental impacts in the Merit Review Report, which will summarize the strengths and weaknesses of the proposals according to the merit review criteria and discuss the potential environmental impacts of the proposals under consideration for selection. This report also will provide certain other information called for in 10 CFR 1021.216(g).

This variance does not affect the requirements imposed by 10 CFR 1021.216(i). If projects selected for funding require preparation of an environmental assessment or environmental impact statement, these NEPA reviews will be completed before DOE takes any action that would have an adverse environmental impact or limit the choice of reasonable alternatives. In addition, consistent with the openness provisions of 10 CFR 1021.216(h), any such environmental assessment or environmental impact statement will describe the environmental factors noted in the Merit Review Report that are relevant to the proposal being analyzed.

[1] DOE's NEPA regulations state at 10 CFR 1021.343(c) that the Secretary of Energy must provide written approval of any variance under that section. However, this authority has been delegated to the General Counsel pursuant to *Department of Energy Delegation Order No. 00–015.00A to the General Counsel.*

Issued in Washington, DC, on August 12, 2009.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. E9–19763 Filed 8–17–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–452–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

August 11, 2009.

Take notice that on August 5, 2009, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in Docket No. CP09–452–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to abandon certain minor underground natural gas storage facilities, located in Jefferson County, Pennsylvania, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, National Fuel proposes to plug and abandon one injection/withdrawal well, Well 4885 and to abandon the associated well line GW–4885, consisting of approximately 500 feet of 4-inch diameter pipeline, in the Galbraith Storage Field, located in Jefferson County, Pennsylvania. National Fuel states that the well is no longer useful due to poor injection performance and poor deliverability and needs to be reconditioned or plugged due to deterioration of the well casing. National Fuel declares that the well line will serve no purpose once the well is plugged and abandoned. National Fuel asserts that due to the poor performance of Well 4885, the proposed abandonment will not result in a material decrease in service to customers.

Any questions regarding the application should be directed to David W. Reitz, Deputy General Counsel, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, or call at (716) 857–7949.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–19729 Filed 8–17–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009–NNNN; FRL–8943–2]

Availability of the External Peer Review Draft of Using Probabilistic Methods To Enhance the Role of Risk Analysis in Decision-Making With Case Study Examples

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a 15-day public comment period for the external peer review draft of ''Using Probabilistic Methods to Enhance the Role of Risk Analysis in Decision-Making With Case Study Examples,'' a white paper, and the ''Manager's Summary'' of the same document. All comments received by the closing date of September 1, 2009 will be shared with the external peer review panel for their consideration. Comments received after the close of the comment period may be considered by EPA when it finalizes the document. These draft interim papers do not represent and should not be construed to represent any EPA policy, viewpoint, or determination. Members of the public may obtain the draft documents from *http://www.regulations.gov;* or *http://www.epa.gov/raf/prawhitepaper;* or from Gary Bangs via the contact information below.

EPA will convene a panel of invited experts to review the draft document. The external expert peer review will be conducted by letter and closed teleconference in the May 2009 time frame. The panel may consider public comments received in the official public docket for this activity under docket ID number EPA–HQ–ORD–2009–NNNN. The draft documents and peer-review charge are available at *http://www.epa.gov/raf/prawhitepaper.* In preparing a final document, EPA will consider the public comments submitted to EPA's docket during the public comment period as well as the comments and recommendations from the external peer-reviewers.

EPA is releasing these draft documents solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. These documents have not been formally disseminated by the EPA. They do not represent and should not be construed to represent any Agency policy or determination.

DATES: All comments received by September 1, 2009 will be shared with the external peer review panel for their consideration. Comments received beyond that time may be considered by EPA when it finalizes the documents.

ADDRESSES: The draft documents are available electronically through the EPA Office of the Science Advisor's Web site at: *http://www.epa.gov/raf/prawhitepaper.*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–NNNN, by one of the following methods:

- *Online at: http://www.regulations.gov;* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Mail:* ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (EPA/DC), Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2009–NNNN. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–NNNN. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected by statute through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, EPAWest, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Gary Bangs, Risk Assessment Forum, Mail Code 8105R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6667; fax number: (202) 564–2070, *E-mail: bangs.gary@epa.gov.*

SUPPLEMENTARY INFORMATION: Various stakeholders, inside and outside the Agency, have called for a more comprehensive characterization of risks, including uncertainties, in protecting more sensitive or vulnerable populations and life stages. Therefore, the Office of the Science Advisor of the EPA, together with EPA's Science Policy Council and members of EPA's Risk Assessment Forum (RAF), identified a need to examine the use of probabilistic approaches in Agency risk assessment and risk management. An RAF Technical Panel developed this paper and the manager's summary to provide a general overview of the value of probabilistic analyses and similar or related methods, and some examples of current applications across the Agency. The purpose of these papers is not only to describe potential and actual uses of these tools in the risk decision process, but also to encourage their further implementation in human, ecological and environmental risk analysis and related decision making. The enhanced use of probabilistic analyses to characterize uncertainty in assessments would not only reflect external scientific advice on how to further advance EPA risk assessment science, but will also help to address specific challenges faced by managers and improve confidence in Agency decisions. The draft document was prepared by the Probabilistic Risk Analysis Technical Panel of EPA's Risk Assessment Forum and has undergone internal peer review.

Dated: August 4, 2009.

Kevin Teichman,

Acting EPA Science Advisor.

[FR Doc. E9–19755 Filed 8–17–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8946–7]

Science Advisory Board Staff Office; Notification of an Upcoming Meeting of the Science Advisory Board; Ecological Processes and Effects Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB Ecological Processes and Effects Committee to conduct a review of EPA's draft guidance document, *Empirical Approaches for Nutrient Criteria Derivation.*

DATES: The meeting dates are Wednesday, September 9, 2009 from 9 a.m. to 5 p.m. (Eastern Time), Thursday, September 10, 2009 from 8:30 a.m. to 5 p.m. (Eastern Time) and Friday, September 11, 2009 from 8:30 a.m. to 12 noon (Eastern Time).

ADDRESSES: The meeting will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information about this meeting must contact Dr. Thomas Armitage, Designated Federal Officer (DFO). Dr. Armitage may be contacted at the EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail; (202) 343–9995; fax (202) 233–0643; or e-mail at *armitage.thomas@epa.gov.* Any inquiry regarding EPA's draft guidance document, *Empirical Approaches for Nutrient Criteria Derivation,* should be directed to Ms. Ifeyinwa Davis of EPA's Office of Water at *davis.ifeyinwa@epa.gov* or (202) 566–1096. General information about the EPA SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the SAB Ecological Processes and Effects Committee will hold a public meeting to conduct a peer review of EPA's draft guidance document, *Empirical Approaches for Nutrient Criteria Derivation.* The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: EPA's Office of Water (OW) is responsible for deriving national recommended water quality criteria that serve as guidance to States to assist them in establishing water

quality standards. Nutrients (*i.e.,* nitrogen and phosphorus) have been one of the leading causes of surface water quality impairment in the U.S. Therefore, development of numeric nutrient criteria and assisting States in the adoption of numeric nutrient criteria into their water quality standards is a high priority for OW. EPA published peer reviewed technical guidance for developing nutrient criteria for lakes and reservoirs in April 2000, rivers and streams in July 2000, estuaries and coastal marine waters in October 2001, and Wetlands in June 2008. These guidance documents are available at the following Web site at *http://www.epa.gov/waterscience/criteria/nutrient/guidance/index.html.* The basic analytical approaches for nutrient criteria derivation described in these previously published guidance documents include: (1) The reference condition approach, (2) stressor-response analysis, and (3) mechanistic modeling. Because many states are currently pursuing the use of empirically-derived stressor-response relationships as the basis for developing numeric nutrient endpoints for water quality standards, OW has developed the draft guidance document, *Empirical Approaches for Nutrient Criteria Derivation,* to augment EPA's published guidance manuals. OW has asked the Science Advisory Board to review the draft guidance document and comment on the technical soundness of proposed empirical approaches as the basis for future development of numeric nutrient criteria.

On April 27, 2009 the SAB Staff Office published a **Federal Register** Notice (74 FR 19084–19085) requesting public nominations of scientists in fields such as ecology, biology, environmental science, risk assessment, statistics, and zoology to augment the SAB Ecological Processes and Effects Committee. In particular, the SAB Staff Office requested nominations of scientists with specialized knowledge and expertise in the use of empirically-derived stressor-response relationships to develop nutrient assessment endpoints. The augmented Ecological Processes and Effects Committee will conduct the review of EPA's draft *Empirical Approaches for Nutrient Criteria Derivation.*

Availability of Meeting Materials: The meeting agenda, SAB Committee roster, charge to the Committee, and other meeting material will be posted on the SAB Web site at *http://www.epa.gov/sab* in advance of the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information on the topic of this advisory activity, and/or the group conducting the activity, for the SAB to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker. Interested parties should contact Dr. Armitage, DFO, in writing (preferably via e-mail) at the contact information noted above by September 1, 2009 to be placed on a list of public speakers for the meeting. *Written Statements:* Written statements should be received in the SAB Staff Office no later than September 4, 2009 so that the information may be made available to the SAB Committee members for their consideration. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are requested to provide two versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Armitage at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: August 11, 2009.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–19759 Filed 8–17–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8946–6]

Science Advisory Board Staff Office; Notification of a Meeting of the Science Advisory Board Drinking Water Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the SAB Drinking Water Committee (DWC) to provide advice on the Agency's draft *Protocol for Microbial Risk Assessment to Support Human Health Protection for Water-Based Media* and to discuss its draft advisory report on the Agency's supporting analysis for the proposed revised Total Coliform Rule.

DATES: The SAB will hold the public face-to-face meeting on September 21, 2009 from 9 a.m. to 5 p.m. (Eastern Time) and will continue on September 22, 2009 from 8:30 a.m. to 1 p.m. (Eastern Time).

ADDRESSES: The September 21–22, 2009 face-to-face meeting will be held at the SAB Conference Center, 1025 F Street, NW., Room 3705, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public meeting should contact Mr. Aaron Yeow, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9878; fax: (202) 233–0643; or e-mail at yeow.aaron@epa.gov. General information concerning the EPA Science Advisory Board can be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the SAB Drinking Water Committee (DWC) will hold a public meeting to provide advice on the Agency's draft *Protocol for Microbial Risk Assessment to Support Human Health Protection for Water-Based Media* and to discuss its draft advisory report on the Agency's supporting analysis for the proposed revised Total Coliform Rule. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under FACA. The SAB will comply with the provisions of FACA and all appropriate EPA and SAB Staff Office procedural policies.

Background: EPA's Office of Water (OW) is responsible for protecting human health and the environment from contaminants in water. To achieve this goal, OW conducts risk assessments that apply scientific principles and methods to determine the nature and magnitude of health risks from contaminant exposures. OW performs microbial risk assessments (MRA) to support new regulations for microbial

pathogens in drinking water under the Safe Drinking Water Act (SDWA). MRAs also support the development of health-based ambient water quality criteria and biosolids criteria under the Clean Water Act (CWA). These criteria protect against adverse human exposures to infectious disease microorganisms in recreational waters, shellfish growing waters, and wastewater biosolids.

Because of the importance of MRAs, OW developed a Microbial Risk Assessment Framework and is developing a draft *Protocol for Microbial Risk Assessment to Support Human Health Protection for Water-Based Media* to provide Agency guidance for performing microbial risk assessments. Current Agency risk assessment guidance is geared towards chemical risk assessment. MRAs do not fit easily within that framework because of microbial and host factors that do not affect chemical risk assessments. A separate protocol is needed to help risk assessors address these factors in a consistent way.

The draft *Protocol for Microbial Risk Assessment to Support Human Health Protection for Water-Based Media* will be used as guidance for preparing qualitative or quantitative MRAs for recreational water exposures, evaluation of biosolids application to land, and drinking water regulation development applications. OW may also make the Protocol available to States, non-governmental organizations, and international agencies to use in conducting risk assessments related to water media. In addition to supporting new regulations under the SDWA and supporting the development of criteria under the CWA, the MRA Protocol may also be used for a number of different applications such as assessing the potential human health risks associated with a known pathogen, determining critical control points for risk mitigation/control measures, identifying and prioritizing research and development, assisting in epidemiological investigations, and determining consequences of management options to reduce risk.

The Office of Water is requesting that the SAB provide advice on the draft *Protocol for Microbial Risk Assessment to Support Human Health Protection for Water-Based Media* and to provide recommendations on: how to improve the overall approach, the applicability of the Protocol, the reasonableness of the protocol, the clarity of the Protocol, the completeness and robustness of the protocol, and the ease of use of the Protocol for conducting water-based microbial risk assessments.

The SAB DWC will also discuss its draft advisory report on the Agency's supporting analysis for the proposed revised Total Coliform Rule during this meeting. The Committee met previously on May 20, 2009 and on June 9–June 10, 2009 to deliberate on the Agency's charge questions regarding the supporting analysis. A **Federal Register** Notice dated May 1, 2009 (*74 FR 20297–20298*) announced these meetings and provided background information on this advisory activity.

Availability of Meeting Materials: The meeting agenda and other materials, including a link to access the EPA review document(s) related to the draft *Protocol for Microbial Risk Assessment to Support Human Health Protection for Water-Based Media* and draft advisory report on the Agency's supporting analysis for the proposed revised Total Coliform Rule, will be posted on the SAB Web site *(http://www.epa.gov/sab)* in advance of the meeting. For questions and information concerning the Agency's documents relating to the Protocol, please contact Dr. Stephen Schaub at (202) 566–1126 or *schaub.stephen@epa.gov.* For questions and information concerning the SAB's draft advisory report on EPA's proposed Total Coliform Rule revisions, please contact Dr. Suhair Shallal at (202) 343–9977 or *shallal.suhair@epa.gov.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider on the topics included in this advisory activity and/or group conducting the activity. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public SAB face-to-face meeting will be limited to five minutes, with no more than a total of one hour for all speakers. To be placed on the public speaker list for the Microbial Risk Assessment Protocol, interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via e-mail), by September 14, 2009 at the contact information noted above. To be placed on the public speaker list for the draft SAB advisory report on the Total Coliform Rule revisions, interested parties should contact Dr. Suhair Shallal, DFO, in writing (preferably via e-mail), by September 14, 2009 at the contact information noted above.

Written Statements: Written statements should be received in the SAB Staff Office by September 14, 2009, so that the information may be made available to the SAB for their consideration prior to the face-to-face meeting. Written statements on the Microbial Risk Assessment Protocol should be supplied to the DFO via e-mail to *yeow.aaron@epa.gov* and written statements on the draft SAB advisory report on the Total Coliform Rule Revisions should be supplied to the DFO via e-mail to *shallal.suhair@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are requested to provide two versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 343–9878 or *yeow.aaron@epa.gov.* To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 6, 2009.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–19752 Filed 8–17–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications, Comments Requested

AGENCY: Federal Communications Commision

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501–3520) Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance

the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before October 19, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Cathy Williams, Federal Communications Commission (FCC), Room 1–C823, 445 12th Street, SW, Washington, D.C. 20554 . To submit your comments by e–mail send them to: *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) contact Cathy Williams on (202) 418–2918 or send an e–mail to *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1061.

Title: Part 25 of the Commission's Rules Governing the Blanket Licensing of Earth Stations on Vessels Operating with Geostationary Satellites in the Fixed–Satellite Service in the C– and Ku–Bands.

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 15 respondents; 15 responses.

Estimated Time per Response: Estimated time is different for each response – the response with the shortest duration takes an estimated 0.5 hours to complete and the response with the longest duration takes an estimated 24 hours to complete.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory approval for the information collection requirements under Sections 4(i), 7(a), 303(c), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(c), 303(f), 303(g) and 303(r).

Total Annual Burden: 252 hours.

Total Annual Cost: $145,500.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality pertaining to the information collection requirements in this collection.

Needs and Uses: On July 31, 2009, the Federal Communications Commission (''Commission'') released an Order on Reconsideration titled, ''In the Matter of the Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925–6425 MHz/ 3700–4200 MHz Bands and 14.0–14.5 GHz/11.7–12.2 GHz Bands'' (FCC 09–63), IB Docket No. 02–10 (''ESV Reconsideration Order''). In the ESV Reconsideration Order, the Commission resolved various concerns raised regarding the operational restrictions placed on ESVs that are designed to protect the fixed–satellite service (FSS), operating in the C–band and Ku–band, and the terrestrially–based fixed service (FS), operating in the C–band, from harmful interference. The Commission adopted rule changes that should provide ESV operators with greater operational flexibility while continuing to ensure that the other services in these bands are protected from harmful interference.

The PRA information collection requirements contained in the ESV Reconsideration Order are as follows:

1. Any ESV applicant that uses transmitters with off–axis EIRP densities lower than or equal to the off–axis EIRP limits must: (1) file three tables showing the off–axis EIRP level of the proposed earth station antenna in the direction of the plane of the GSO; the co–polarized EIRP in the elevation plane, that is, the plane perpendicular to the plane of the GSO; and cross polarized EIRP. In each table, the EIRP level must be provided at increments of 0.1° for angles between 0° and 10° off–axis, and at increments of 5° for angles between 10° and 180° off–axis or; (2) a certification, in Schedule B, that the ESV antenna conforms to the gain pattern criteria of § 25.209(a) and (b), that, combined with the maximum input power density calculated from the EIRP density less the antenna gain, which is entered in Schedule B, demonstrates that the off–axis EIRP spectral density envelope will be met under the assumption that the antenna is pointed at the target satellite.

2. An ESV applicant proposing to implement a transmitter that will maintain a pointing error of less than or equal to 0.2° must provide a certification from the equipment manufacturer stating that the antenna tracking system will maintain a pointing error of less than or equal to 0.2° between the orbital location of the target satellite and the axis of the main lobe of the ESV antenna and that the antenna tracking system is capable of ceasing emissions within 100 milliseconds if the angle between the orbital location of the target satellite and the axis of the main lobe of the ESV antenna exceeds 0.5°.

3. An ESV applicant proposing to implement a transmitter with an antenna pointing error of greater than 0.2 degrees must: (A) declare, in its application, a maximum antenna pointing error and demonstrate that the maximum antenna pointing error can be achieved without exceeding the off–axis EIRP spectral–density limits in paragraph (a)(1)(i) of this section; and (B) demonstrate that the ESV transmitter can detect if the transmitter exceeds the declared maximum antenna pointing error and can cease transmission within 100 milliseconds if the angle between the orbital location of the target satellite and the axis of the main lobe of the ESV antenna exceeds the declared maximum antenna pointing error, and will not resume transmissions until the angle between the orbital location of the target satellite and the axis of the main lobe of the ESV antenna is less than or equal to the declared maximum antenna pointing error.

4. An ESV applicant proposing to implement a transmitter that exceeds the off–axis EIRP spectral–density limits shall provide the following certifications and demonstration as exhibits to its earth station application: (i) a statement from the target satellite operator certifying that the proposed operation of the ESV has the potential to create harmful interference to satellite networks adjacent to the target satellite(s) that may be unacceptable; (ii) a statement from the target satellite operator certifying that the power–density levels that the ESV applicant provided to the target satellite operator are consistent with the existing coordination agreements between its satellite(s) and the adjacent satellite systems within 6° of orbital separation from its satellite(s); (iii) a statement from the target satellite operator certifying that it will include the power–density levels of the ESV applicant in all future coordination agreements; (iv) A demonstration from the ESV operator that the ESV system is capable of detecting and automatically ceasing emissions within 100 milliseconds when the transmitter exceeds the off–axis EIRP spectral–densities supplied to the target satellite operator; and (v) a certification from the

ESV operator that the ESV system complies with the power limits in Section 25.204(h).

5. The point of contact information referred to in paragraph (a)(3) and, if applicable, paragraph (a)(6), of Sections 25.221 and 25.222, must be included in the application.

The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the U.S. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the World Trade Organization (WTO) Basic Telecom Agreement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–19671 Filed 8–17–08; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2894]

PETITION FOR RECONSIDERATION OF ACTION IN RULEMAKING PROCEEDING

Aug 04, 2009.

SUMMARY: Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by September 2, 2009. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In The Matter of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Grants and Church Rock, New Mexico) (Docket No. MB–05–263)

NUMBER OF PETITIONS FILED: 1

Federal Communications Commission

Marlene H. Dortch,

Secretary.

[FR Doc. E9–19668 Filed 8–17–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2895]

PETITION FOR RECONSIDERATION OF ACTION IN RULEMAKING PROCEEDING

Aug 10, 2009.

SUMMARY: Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by September 2, 2009. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In The Matter of Digital Television Distributed Transmission System Technologies (MB Docket No. 05–312)

NUMBER OF PETITIONS FILED: 2

Federal Communications Commission

Marlene H. Dortch,

Secretary.

[FR Doc. E9–19669 Filed 8–17–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL HOUSING FINANCE AGENCY

[No. 2009–N–11]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-day Notice of Submission of Information Collection for Approval from the Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning a currently approved information collection known as ''Community Support Requirements,'' which has been assigned control number 2590–0005 by the Office of Management and Budget (OMB). Today FHFA will submit the information collection to OMB for review and approval of a three year extension of the control number, which is due to expire on September 30, 2009.

DATES: Interested persons may submit comments on or before September 17, 2009.

Comments: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, *Fax:* 202–395–6974, *E-mail address: OIRA_Submission@omb.eop.gov.* Please also submit them to FHFA using any *one* of the following methods:

- *E-mail: RegComments@fhfa.gov.* Please include Proposed Collection; Comment Request: Community Support Requirements (No. 2009–N–11) in the subject line of the message.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552, *Attention:* Public Comments/ Proposed Collection; Comment Request: ''Community Support Requirements,'' (No. 2009–N–11).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.* Send requests for copies of the Community Support Statement Form and supporting documentation to the contact referenced in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: R. Reginald Ellison, Senior Program Analyst, 202–408–2968 (not a toll-free number), *Reggie.Ellison@fhfa.gov.* The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the FHFA to promulgate regulations establishing standards of community investment or service that Federal Home Loan Bank (Bank) members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). In establishing these community support requirements for Bank members, the FHFA must take into account factors such as the Bank member's performance under the Community Reinvestment Act

of 1977 (CRA), 12 U.S.C. 2901, *et seq.,* and record of lending to first-time homebuyers. 12 U.S.C. 1430(g)(2). 12 CFR part 944 implements section 10(g) of the Bank Act. *See* 12 CFR part 944. The rule provides uniform community support standards all Bank members must meet and review criteria FHFA staff must apply to determine compliance with section 10(g). More specifically, § 944.2 of the rule (12 CFR 944.2) implements the statutory community support requirement and requires each member selected for review to submit a completed Community Support Statement Form to the FHFA. The community support standards for the two statutory factors are found in § 944.3 (12 CFR 944.3)—CRA and first-time homebuyer performance—this provision also provides guidance to a respondent on how it may satisfy the standards . The procedures and criteria FHFA uses in determining whether Bank members satisfy the statutory and regulatory community support requirements are found in §§ 944.4 and 944.5 (12 CFR 944.4 through 944.5)

The information collection contained in the Community Support Statement Form and §§ 944.2 through 944.5 of the rule are necessary to enable and are used by the FHFA to determine whether Bank members satisfy the statutory and regulatory community support requirements. Only Bank members that meet these requirements may maintain continued access to long-term Bank advances. *See* 12 U.S.C. 1430(g).

The OMB number for the information collection is 2590–0005. The OMB clearance for the information collection expires on September 30, 2009. The likely respondents are institutions that are Bank members.

B. Burden Estimate

The FHFA estimates the total annual average number of respondents at 4100 Bank members, with 1 response per member. The estimate for the average hours per response is one hour. The estimate for the total annual hour burden is 4100 hours (4100 members × 1 response per member × 1 hour).

C. Comment Request

The FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) The accuracy of the FHFA estimates of the burdens of the collection of information; (3) Ways to enhance the quality, utility and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Dated: August 13, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–19776 Filed 8–17–09; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 2, 2009.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Alan Isaac Rothenberg, Beverly Hills, California; to acquire at least 10 percent of the voting shares of 1st Century Bancshares, Inc., and thereby indirectly acquire voting shares of 1st Century Bank, N.A., both of Los Angeles, California.

Board of Governors of the Federal Reserve System, August 13, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–19743 Filed 8–17–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 11, 2009.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Artisan Financial Corporation, Barrington, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Valley Community Bancorp, Inc., and thereby indirectly acquire voting shares of Valley Community Bank, both of St. Charles, Illinois.

Board of Governors of the Federal Reserve System, August 13, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–19742 Filed 8–17–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Delegations of Authority

Notice is hereby given that I have delegated to the National Coordinator for Health Information Technology (National Coordinator) the authority vested in the Secretary under Title XXX of the Public Health Service Act (42 U.S.C. 201 *et seq.*), as amended, to

administer Subtitle B, ''Incentives for the Use of Health Information Technology,'' sections 3011 through 3017, with the exception of 3012(c)(5), the Financial Support subsection.

These authorities may be redelegated. The delegations authorize the National Coordinator to administer the Incentives for the Use of Health Information Technology as provided in Subtitle B.

I hereby affirm and ratify any actions taken by the National Coordinator or by any other officials of the Office of the National Coordinator for Health Information Technology, which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: August 7, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–19709 Filed 8–17–09; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Ryan M. Wolfort, M.D., Ph.D., Louisiana State University Health Sciences Center—Shreveport : Based on the report of an investigation conducted by Louisiana State University Health Sciences Center—Shreveport (LSUHSC–S) and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Dr. Ryan M. Wolfort, who was a House Officer in the Department of Surgery, and a former graduate student, Department of Molecular and Cellular Physiology, LSUHSC–S, engaged in research misconduct in the reporting of research supported by National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grants R01 HL26441 and P01 HL55552.

Respondent's research misconduct related to his dissertation research as a graduate student, which he undertook at the same time that he also was serving as a House Officer at LSUHSC–S. ORI acknowledges Dr. Wolfort's cooperation with the LSUHSC–S misconduct proceedings.

PHS found that Dr. Wolfort engaged in research misconduct by falsifying and fabricating data reported in three publications [1] and one manuscript [2] that had been submitted for publication, reviewed, and returned for revision. Specifically, Dr. Wolfort falsified and fabricated data reported in research examining the contribution of immune mechanisms to early oxidative stress and endothelial dysfunction in mice with induced dietary hypercholesterolemia by:

1. Admittedly fabricating tabulations and the associated statistical analyses of RT–PCR data on Nox-2 mRNA expression in the three publications and the manuscript;

2. Falsifying data and the associated statistical claims, specifically by (a) Admittedly falsifying the measurements of endothelial function by myographic recordings of aortic ring dilation in reaction to vasoactive substances in the three papers and manuscript, (b) admittedly falsifying the measurement of cytokine by cytometric bead assay in paper 3, and (c) falsifying the measurement of superoxide production by cytochrome c reduction in papers 1 and 2, for which the underlying spreadsheet data the Respondent claims were unintentionally misrepresented, massaged, and improperly collated, but for which Respondent acknowledges that the raw data were missing for all three papers, admittedly because he intentionally erased files and discarded notebooks.

Dr. Wolfort has entered into a Voluntary Exclusion Agreement in which he has voluntarily agreed, for a period of two (2) years, beginning on July 13, 2009:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States pursuant to HHS' Implementation (2 CFR part 276 *et seq.*) of OMB Guidelines to Agencies on Government wide Debarment and Suspension (2 CFR, part 180); and

(2) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852. (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. E9–19795 Filed 8–17–09; 8:45 am]

BILLING CODE 4150–31–P

[1] Wolfort, R.M., Stokes, K.Y., & Granger, D.N. ''CN4+ T lymphocytes mediate hypercholesterolemia-induced endothelial dysfunction via a NAD(P)H oxidase-dependent mechanism.'' *Am J Physiol Heart Circ Physiol* 294:H2619–H2626, 2008; hereafter referred to as ''paper 1.'' Identified for retraction.

Wolfort, R.M., Manriquez, R., Stokes, K.Y., & Granger, D.N. ''Platelet-derived RANTES mediates hypercholesterolemia-induced superoxide production and endothelial dysfunction.'' *Arterioscler. Thromb. Vasc. Biol.* Vol. 28 (pages unavailable), as Epub 2008, July 17; hereafter referred to as ''paper 2.'' Identified for retraction.

Wolfort, R.M., Stokes, K.Y., & Granger, D.N. ''Immune cell-mediated endothelial cell dysfunction during hypercholesterolemia involves interferon-γ dependent signaling.'' Am J Physiol Heart Circ Physiol, as Epub 2008, September 5; hereafter referred to as ''paper 3.'' Retracted in *Am J Physiol Heart Circ Physiol 295(5)*:H2219, 2008 November.

[2] Manuscript submitted to the journal *Free Radicals in Biology and Medicine,* by Ryan M. Wolfort, Katherine C. Wood, Robert P. Hebbel, and Neil Granger, ''Mechanisms underlying the vasomotor dysfunction in sickle transgenic mice,'' Ms Number FRBM–D–08–00454; hereafter referred to as the *''FRBM''* manuscript.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 11¼% for the quarter ended June 30, 2009. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: August 6, 2009.

Molly P. Dawson,

Director, Office of Financial Policy and Reporting.

[FR Doc. E9–19707 Filed 8–17–09; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0595]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Study: Toll-Free Number for Consumer Reporting of Drug Product Side Effects in Direct-to-Consumer Television Advertisements for Prescription Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 17, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910—New and the title ''Experimental Study: Toll-Free Number for Consumer Reporting of Drug Product Side Effects in Direct-to-Consumer Television Advertisements for Prescription Drugs.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Experimental Study: Toll-Free Number for Consumer Reporting of Drug Product Side Effects in Direct-to-Consumer Television Advertisements for Prescription Drugs—(OMB Control Number 0910—New)

The Federal Food, Drug, and Cosmetic Act (the act) requires that manufacturers, packers, and distributors (sponsors) who advertise prescription human and animal drugs, including biological products for humans, disclose in advertisements certain information about the advertised product's uses and risks. For prescription drugs and biologics, the act requires advertisements to contain ''information in brief summary relating to side effects, contraindications, and effectiveness'' (21 U.S.C. 352(n)). FDA is responsible for enforcing the act and implementing regulations.

On September 27, 2007, the President signed into law the Food and Drug Administration Amendments Act (FDAAA) (Public Law 110–85). Title IX of FDAAA amends section 502(n) of the act (21 U.S.C. 352) by requiring printed direct-to-consumer (DTC) advertisements for prescription drug products to include the following statement printed in conspicuous text: ''You are encouraged to report negative side effects of prescription drugs to the FDA. Visit *www.fda.gov/medwatch*, or call 1–800–FDA–1088.'' Title IX of FDAAA also requires the Secretary of Health and Human Services (the Secretary), in consultation with the Risk Communication Advisory Committee (RCAC), to conduct a study not later than 6 months after the date of enactment of FDAAA to determine if this statement is appropriate for inclusion in DTC television advertisements for prescription drug products. As part of this study, the Secretary shall consider whether the information in the statement described previously in this paragraph would detract from the presentation of risk information in a DTC television advertisement. If the Secretary determines that the inclusion of such a statement would be appropriate for television advertisements, FDAAA mandates the issuance of regulations implementing this requirement, and for the regulations to reflect a reasonable length of time for displaying the statement in television advertisements. Finally, FDAAA requires the Secretary to report the study's findings and any subsequent plans to issue regulations to Congress.

In accordance with the requirements of FDAAA, FDA convened a meeting of the RCAC on May 15 and 16, 2008. A draft design for studying this issue was proposed at that time and discussed by the advisory committee. Based on comments received at that meeting, changes were made to the proposed study design. The transcripts and materials from that meeting can be found at *http://www.fda.gov/ohrms/dockets/ac/oc08.html#RCAC*.

I. Background

Section 17 of the Best Pharmaceuticals for Children Act (the BPCA) (Public Law 107–109, January 4, 2002) required FDA to issue a final rule mandating the addition of a statement to the labeling of each drug product for which an application is approved under section 505 of the act (21 U.S.C. 355). Under the BPCA, the statements must include: (1) A toll-free number maintained by FDA for the purpose of receiving reports of adverse events regarding drugs, and (2) a statement that the number is to be used only for reporting purposes, and it should not be used to seek or obtain medical advice (the side effects statement).

On April 22, 2004, FDA published a proposed rule with a proposed side effects statement for certain prescription drug product labeling and a proposed side effects statement for certain over-the-counter drug product labeling (69 FR 21778). In the proposed rule, FDA solicited comments on a proposed statement that FDA believed comported with the previously mentioned mandate in the BPCA. The agency received 12 comments suggesting changes to the specific wording proposed. The agency also received several comments suggesting that FDA engage in research to study the wording of the proposed side effects statement with consumers. Among the reasons cited for testing the statement were to: (1) Determine the best and most precise wording for the statement, (2) evaluate consumer comprehension of the proposed statement, and (3) address concerns that consumers who read the statement will mistakenly call FDA in search of medical advice rather than seeking appropriate medical treatment. In addition, during the clearance process for the proposed rule, both the Office of Information and Regulatory Affairs of OMB and the Office of the Assistant Secretary for Planning and Evaluation of the Department of Health and Human Services suggested that FDA conduct focus groups or other consumer studies to inform the wording of the side effects statement.

During the spring of 2006, to assist in developing this study, FDA conducted two focus groups to gauge consumer understanding and preferences for a number of proposed side effects statements and to narrow the number of statements to be tested in subsequent experimental research. In addition to the information collected on which versions of the statements participants preferred, discussions showed that people varied in their understanding of when to call FDA or their health care

practitioners and that some people would not call FDA even if they experienced a serious side effect. Several people in the focus groups suggested the addition of a Web site to report adverse side effects. Based on the findings from the focus groups, nine statements were selected for quantitative testing. A labeling comprehension experiment was conducted with 1,674 men and women ranging in age from 21 to 95 with varying levels of education (OMB Control No. 0910–0497). The results from that quantitative test found that only one of the versions tested was rated as significantly less clear than the others, which were all rated as generally clear and understandable. The results also showed that participants reported they would not call FDA seeking medical advice. Further, among those participants who said they would call FDA, the majority indicated they would call their doctor for medical advice, rather than FDA, regardless of the severity of the side effect. Finally, participants indicated they could distinguish between serious and non-serious side effects, reporting that they would seek emergency medical care in the case of serious side effects. The report of the study is available in the docket for the final rule (Docket No. FDA–2003–N–0313). The final rule, Toll-Free Number for Reporting Adverse Events on Labeling for Human Drug Products (TFNR) (73 FR 63886, October 28, 2008), is available at *http://www.fda.gov/OHRMS/DOCKETS/98fr/E8–25670.pdf*.

In the **Federal Register** of November 26, 2008 (73 FR 72058), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received six comments in response to our initial **Federal Register** notice, published on November 26, 2008. One of these comments, from an anonymous citizen, did not require specific responses, as it was outside the scope of the project (e.g., FDA approves too many drugs; harmful drugs are ''being foisted on the population''), although it could be viewed as a statement of support for conducting the research.

II. Comments on the Information Collection

In the following section, we outline the issues raised in the comments and provide our responses.

(Comment 1) Do not place the toll-free statement in television ads because it is better placed within written materials that accompany prescription drugs. Some system for enforcing the legitimacy of calls is necessary, otherwise callers with an ''agenda'' or ''the uninformed'' could ''doom medicines for no reason.''

(Response) This comment mostly applies to MedWatch procedures that are outside the scope of the proposed research. This study is addressing the understanding of information in the ad. We have notified the appropriate parties in the agency of this comment.

(Comment 2) The comment supports DTC advertising that is educational and ''delayed until postmarketing surveillance data are collected and assessed.'' DTC television ads should include a toll-free statement. Overall, this comment supports the proposed research, but includes the following specific suggestions: (1) The toll-free statement is best placed after the risk information and (2) it should be placed during the presentation of non-life-threatening or minor side effects.

(Response) We agree that placement during non-life-threatening or minor side effects may be the best placement for the toll-free statement. In a television ad, however, that information is presented in a very short amount of time, sometimes only seconds (and this varies depending on the drug product). We have designed our study to allow the data to show for us the best placement of the statement.

(Comment 3) Neither of the proposed toll-free statements addresses whether consumers can distinguish between serious and non-serious side effects. A simulation study should be used to assess this issue.

(Response) We refer this comment to previous research conducted by FDA on this topic, described previously. This study found that participants were easily able to distinguish between serious and non-serious side effects and that they reported an ability to take the right action with regard to each one.

(Comment 4) FDA should post the proposed questionnaire, the primary endpoint(s) of the study with action standards, and provide the mock advertisement to interested parties for use in their research.

(Response) The proposed questionnaire has been and continues to be available upon request. We agree that threshold levels and primary endpoints were not well explained in the 60-day notice and have worked to correct that in the 30-day notice. Please note the addition of specific hypotheses and the analysis plan. At the conclusion of our data collection, we will make the advertisement available to those who request it.

(Comment 5) Adequate provision issues may not be considered or addressed. Multiple telephone numbers or Web sites may confuse consumers. Use alternate wording for the toll-free statement: ''For information about PRODUCT X or to report side effects, see our ad in ___ magazine.'' Include payment assistance information, as this is often currently included in television ads.

(Response) We have designed the stimuli ad to closely approximate an actual DTC ad, including adequate provision measures and other supers. Division of Drug Marketing, Advertising, and Communications reviewers have examined the script and storyboard to ensure that the ad meets regulatory requirements. The contractor producing the ad has extensive experience with this type of production and provided additional quality control measures. In directing us to complete this research, Congress was likely concerned about the same issues expressed by this comment, i.e., that the toll-free statement may be confusing. That is one of the main research questions we will address. In terms of wording, Congress directed us to test specific language. In addition to this language, we propose to test another version that was found most acceptable in previous usability research conducted by the agency. Finally, because payment assistance information is relatively new, not universal, and not required by regulation, we have not included this statement in our stimuli ads.

FDA has contracted with a professional multimedia company to create ad stimuli. In addition, FDA has instituted a procedure of extensive pretesting of the ad stimuli to be used. Our extensive experience with current and past DTC ads, pretesting, and collaboration with the contractor should ensure realistic ads that will enable us to successfully investigate our experimental variables.

(Comment 6) Study multiple medical conditions, including symptomatic and asymptomatic conditions; diseases that affect different age groups; sufferers and non-sufferers; and consumers with varying degrees of knowledge about their medical conditions.

(Response) We do not have the resources to create mock ads to test multiple medical conditions. We have no reason to suspect that the principles we study in this medical condition (e.g., placement, duration, wording, prominence) would be different when applied to an ad for another medical condition. We welcome other parties to extend the current research by applying it to other conditions. We will ask respondents about their knowledge of their medical conditions and will

conduct analyses to see if this variable plays a role in their responses.

We have decided, however, to recruit for the study two distinct populations: Those who have been diagnosed with high blood pressure and a general population sample. This approach will allow us to determine whether diagnosed individuals and other people who may be exposed to such television advertising will differ in their responses to the ad.

(Comment 7) Using the condition where the toll-free statement is present during the whole ad to control for novelty will increase rather than decrease the attention to the statement.

(Response) We agree that the condition in which the toll-free statement appears during the entire ad may increase notice of it. We think there is also a good possibility that it might be ignored, in such a way that the statement might be more prominent in other conditions. To control for novelty, participants will see an unrelated DTC ad with the toll-free statement presented the same way as the test ad before they see the test ad. This may control for novelty in the test ad and may attenuate the belief that our test product has some unique quality that causes it to need a special toll-free statement.

(Comment 8) This protocol will take much longer than 15 minutes.

(Response) Because we are also concerned that this protocol will take longer than 15 minutes, we have revised our burden estimate to reflect a 20-minute protocol. Also, to ensure that all test parameters are met, including timing of experiment, we have budgeted for 2 pretests of 700 individuals each.

(Comment 9) The placement and duration variables should be removed from study because regardless of placement, the statement may interrupt the flow of the most important information.

(Response) These are empirical questions. We will not know the answer to either of these questions until we collect data.

(Comment 10) Remove the audio-only condition because this eliminates the hearing-impaired population. Include visually and hearing-impaired persons to more accurately represent the population.

(Response) Even in our audio-only condition as originally proposed, the Web site and phone numbers were placed on screen. Current requirements for the most important risk information (i.e., the major statement) are that it be placed in the audio portion of the ad. Thus, this is a reasonable condition to test. Upon further discussion, however, we agree that we do not need two distinct extra-prominent conditions, and will test only one. We do not plan to actively exclude people with audio or visual impairments from the study but we do not have the resources to actively recruit them.

(Comment 11) High blood pressure may not be the most representative condition for a general sample of consumers ''over the age of 18.'' The tested sample population should be representative of actual sufferers of the condition being advertised.

(Response) We agree that this is an important consideration. Upon further discussion, we have decided to recruit for the study two distinct populations: Those who have been diagnosed with high blood pressure and a general population sample. This approach will allow us to determine whether diagnosed individuals and other people who may be exposed to such television advertising will differ in their responses to the ad.

(Comment 12) Remove the fourth commercial for an unrelated medical condition because it does not contribute to the study and may confound results.

(Response) Study participants will see four ads—the second ad will be an unrelated DTC ad and the fourth ad will be the test ad. We propose to include the other DTC ad with the matching toll-free statement parameters so that consumers do not think that our test ad reflects a special product that needs a special warning. It also may attenuate the effect of novelty.

(Comment 13) Because the toll-free statement may artificially increase impact of risk information, FDA should test information gleaned from the presence of the toll-free statement in print ads first.

(Response) FDA has not collected any information on the presence of the statement in print ads, although we agree this would be valuable information. Moreover, Congress has instructed us specifically to test the toll-free statement in television ads.

(Comment 14) Including the manufacturer's toll-free number instead of the FDA contact number may help to mitigate the possibility that the toll-free statement artificially increases the impact of risk information.

(Response) Sponsors already include the manufacturer's telephone number in all ads as a way to fulfill one part of the adequate provision requirement. The current study does not examine the replacement of that number with the toll-free statement, but instead the statement's inclusion above and beyond current requirements.

(Comment 15) The agency's expectation of yielding a sample of 2,000 people from a total of 2,400 is unrealistic based on a typical response rate of 5 percent.

(Response) We do not expect to yield a sample of 2,000 people from a total of 2,400. As shown in Table 1 of this document, we have revised our sample numbers.

(Comment 16) How well can an Internet study simulate a television environment?

(Response) We agree that simulating an everyday television-watching environment would increase the realism of the study. Participation in an experiment in any context, however, is unlikely to perfectly do so. We do not believe that a mall-intercept administration would increase the realism of the study and a phone-based survey is not feasible, given the modality of the advertisement in question. Moreover, an Internet study may be as close to the television-watching environment as any other method because participants will be in their own homes and some participants already watch streaming video on their computers.

(Comment 17) What are the thresholds for interference (''detraction'') in this study? Specifically, will the statement be included only if it does not affect risk comprehension at all, or if it does not affect risk comprehension ''much''—and if this is the case, what is too much?

(Response) If the study demonstrates that the inclusion of the toll-free statement does not interfere with the processing of the risk information, then Congress is likely to mandate its inclusion. If the data demonstrate some detraction from risk information, then the decision becomes more complicated. As the interference between the toll-free statement and the risk information increases, the less likely it is that it will be mandated. A tradeoff analysis will have to be conducted and this study will be only one part of the determination. That is, the amount of detraction will have to be weighed against the benefit of including the statement and this benefit will be determined in part by public health concerns and analysis of MedWatch data.

(Comment 18) Participants will see the test ad three times and this may cause problems.

(Response) Participants will see the test ad only once after seeing three other filler ads, one of which will be an unrelated DTC ad.

(Comment 19) The current proposed study is comprehensive and appropriate to address the primary research questions under consideration.

(Response) Thank you.

(Comment 20) The toll-free statement in the unrelated DTC ad should be presented in the same way as in the test ad.

(Response) We had planned to do so.

(Comment 21) The questionnaire does not specifically address the risk of nontreatment of the disease condition.

(Response) FDA acknowledges that this study does not address this risk. Nevertheless, this is outside the scope of the current investigation.

(Comment 22) Ask if respondents suffer from diabetes, high cholesterol, obesity, or the condition treated in the unrelated DTC ad.

(Response) We plan to ask about the state of respondent's health. In considering this comment, we have added additional questions to the questionnaire. Please see the revised questionnaire for details.

(Comment 23) Question 7 in the questionnaire is vague and should be placed earlier in the questionnaire.

(Response) Question 7, which originally asked participants in an open-ended fashion to report on ''some information written on the screen'' has been changed. We now ask participants which of several options they saw and follow that up with an open-ended question about what the statement means to them. We do not wish to move this question series earlier in the questionnaire because it is not one of our main dependent measures.

(Comment 24) It is unclear how FDA plans to analyze results from this research, particularly what action consumers are expected to take after they have heard and understood the toll-free statement.

(Response) The purpose of this research is not to determine what action consumers will take after seeing the ad. We addressed these issues in the labeling comprehension study described at the beginning of this notice (Docket No. FDA–2003–N–0313). The purpose of the current proposed study is to determine whether the risk information is adequately comprehended and whether the toll-free statement is noticeable and recalled.

III. Revised Study

Experimental Study: Toll-Free Number for Consumer Reporting of Drug Product Side Effects in Direct-to-Consumer Television Advertisements for Prescription Drugs—(OMB Control Number 0910—New)

Based in part on these comments, further research discussions, and the input of the RCAC on May 16, 2008, we propose the following revised design, hypotheses, and analysis plan.

A. Overview

This study will examine the placement of the toll-free statement and the length of time the statement is presented on screen in a DTC television advertisement for a prescription drug. The primary dependent measure of interest is consumer comprehension of the important risk information in the advertisement. This study will also examine potential differences in comprehension based on the wording of the toll-free statement and the prominence of the statement.

The application of a new piece of information for viewers of DTC ads presents logistical challenges. From a research perspective, the primary issue under investigation is how to impart additional information without increasing ''cognitive load,'' thus leading to information overload. Cognitive load is an index of the memory demands necessary to process a set of information (Ref. 1). As cognitive load increases, more mental resources are necessary to process and understand the information. DTC ads are already quite dense when compared to ads for other products. The risk information in the major statement of the ad should not be compromised by the addition of the toll-free statement. At the same time, it is preferable that the risk information and the toll-free statement information are presented in such a way that both are understandable. We have chosen a set of variables in the current study to investigate issues of cognitive load. They are described briefly below before examining the details of the research design.

1. Placement

The location of the toll-free statement may facilitate or detract from the risk information in the major statement. We have chosen three locations for this information to test which location results in the greatest communication of the risks of the drug and the concept that side effects can be reported. It is possible that locating the toll-free statement before the major statement provides a ''prime'' for the risk information that follows; that is, the mention of side effects in the toll-free statement will cause consumers to start thinking about side effect-related information, which facilitates comprehension of the risk information that follows. In this case, the two conceptual pieces of information may flow together easily. Conversely, it is possible that the toll-free statement confuses consumers or provides no information for them because they have not yet heard any risk information. Thus, without context, the statement lacks applicability.

Placing the toll-free statement during the major statement likely reduces the comprehension of the risk information for the drug because it divides viewer's attention between two competing pieces of information. It is possible, however, that the juxtaposition of these two informational concepts are complimentary and therefore do not conflict.

The toll-free statement may serve the best role after the risk information has been presented. In this case, participants have been told about the risks and side effects of the drug before they are told they may report this information. This essentially primes the toll-free statement with the major statement. We do not expect this placement to interfere with the comprehension of risk information, as it is not present during the voicing of risks and has not been introduced to viewers at this point. In addition, the usefulness of the toll-free statement may improve in this condition relative to those discussed in the previous paragraphs because viewers have been provided with context.

Over time, it is likely that the toll-free statement will become part of the background of the ads as people become accustomed to seeing this statement in all DTC ads. In this respect, people will have the statement as an option if needed but may be able to disregard it to focus on the risk information otherwise. Thus, we are testing a condition in which the toll-free statement will be present during the entire ad. This test condition will control for the effect of novelty arising from the fact that consumers have not previously seen this type of statement in TV ads. Presence of the statement during the entire ad may increase noticeability of the toll-free statement initially, but will be unlikely to interfere with risk information over time.

2. Statement Type

The second variable, statement type, will have two executions of statement language: The language from the FDAAA versus the language used in the final rule, Toll-Free Number for Reporting Adverse Events on Labeling for Human Drug Products Rule (TFNR; Public Law 107–109, January 4, 2002), and previously tested by FDA. The wording from these two statements is as follows:

- ''You are encouraged to report negative side effects of prescription drugs to the FDA. Visit *www.fda.gov/*

medwatch, or call 1–800–FDA–1088.'' (FDAAA)

• ''Call your doctor for medical advice about side effects. You may report side effects to FDA at 1–800–FDA–1088 or www.fda.gov/medwatch.'' (TFNR)

We think it is important to test both the toll-free statement version in FDAAA and the version that we have previously tested with actual consumers. The most obvious reason for this is to make sure that the statement is maximally readable and understandable. It may be valuable, however, to test two statements for another reason.

If the toll-free statement is enacted in broadcast ads, it is possible that because of the boilerplate language, some amount of habituation will occur. That is, after viewers have seen the same language in multiple ads for multiple products, they may ''tune out'' and not pay attention to the toll-free statement at all. If we test two versions of the statement and find both acceptable, it would be possible to either allow sponsors to choose one statement versus another or to suggest some alternating of the two statements. This is a long-term idea, however, and finding appropriate wording is the primary goal of investigating this variable.

3. Duration

Congress specifically mandates that we investigate the duration of the display of the toll-free statement. As with placement, the length of time the toll-free statement is presented on screen may influence the cognitive load in the ad. For experimental control, we will look at the duration of the statement while holding placement in the ad (after the major statement of risks) constant. Although this placement should not interfere with the processing of the risk information, it is possible that the duration influences the take-away message from the ad. For example, having the statement on screen for a short amount of time may not give consumers enough time to read and process the toll-free message. This may result in lower comprehension of the message but may have no impact on the comprehension of the risk information. Alternatively, displaying the toll-free statement for a longer period of time may remove memory traces of the risks from the major statement, resulting in lower risk comprehension. To determine whether this longer duration increases the usefulness of the toll-free statement itself, we will compare these short and long durations to instances where the toll-free statement is present during the entire ad and where there is no toll-free statement at all.

4. Prominence

In addition to superimposing the toll-free statement on the screen during the ad, there are other methods available to increase the prominence of the statement. In particular, having the statement read aloud in the ad voiceover while the statement is on the screen may be considered particularly prominent. Does the additional prominence of the statement compromise the comprehension of the risk information in the major statement? If not, does the additional prominence result in a greater understanding of the toll-free statement itself? It is likely that there is a tradeoff between the gains of emphasizing the toll-free statement and the comprehension of the risk information. In examining this variable, we are exploring the parameters of this tradeoff.

B. Design

The design will consist of three parts. Part one will be a between-subjects factorial design examining the placement of the toll-free statement by the type of statement. The first variable, placement, will have four levels: Before the major statement of risks, during the major statement of risks, after the major statement of risks, or continuously throughout the whole ad.

In each condition the toll-free statement will appear in the ad as superimposed text at the bottom of the screen. We will also include a control condition in which the statement does not appear.

PART ONE: PLACEMENT BY STATEMENT TYPE

4 x 2 + 1

	Statement Type	
Placement	FDAAA	TFNR
Before major statement of risks		
During major statement of risks		
After major statement of risks		
During the whole ad		

Plus:

Control (no toll-free statement)

Part two of the study will examine four variations in the duration of the toll-free statement using the language from FDAAA: Short (on screen for approximately 3 seconds after the major statement), long (on screen for approximately 6 seconds after the major statement), on screen during the whole ad, and the control condition of no toll-free statement included. These times were adopted by calculating how long it would take a person reading at an average reading speed to read the statement. As in the first part of this study series, the toll-free statement will appear as superimposed text and a control condition in which the toll-free statement does not appear will be included.

PART TWO: DURATION*

4 x 1

Short (on screeen for approximately 3 seconds after major statement)
Long (on screen for approximately 6 seconds after major statement)
During the whole ad
Control (no toll-free statement)

*Using FDAAA statement

Part three of the study will examine two variations in the prominence of the toll-free statement using the language from the FDAAA: Spoken after the major statement with only the Web site and phone number in superimposed text, and a control condition where the toll-free statement is presented visually after the major statement.

PART THREE: PROMINENCE*

2 x 1

Extra Prominent (spoken after major statement of risks, Web site and phone number on screen)
Control (after major statement of risks)

*Using FDAAA statement

We will investigate these issues in one disease condition, high blood pressure, because high blood pressure has a high incidence rate in the population, is a public health concern, and is likely to occur in both males and females. Further, because there is little broadcast promotion for prescription treatment of high blood pressure at this time, participants should be less familiar with DTC television ads for this type of drug, reducing the potential influence of prior experience.

Our primary dependent variable is comprehension of the risk information mentioned in the major statement. In addition to this variable, we will also examine comprehension of benefit information. We will also examine the noticeability and comprehension of the toll-free statement.

C. Procedure

Participants will see a cluster of four ads: Two 15-second non-DTC ads (fillers), an approximately 60-second DTC ad for a fictitious high blood pressure medication, and a 30-second DTC ad for an unrelated medical condition with the same toll-free statement included. We include two DTC ads with the toll-free statement in our protocol because this better approximates what will happen if this statement is enacted. That is, viewers will see the statement in all DTC ads for all products. In this study, we want to avoid the suggestion that there is something particular about the high blood pressure drug class that causes the statement to be mandated. Thus, we will show multiple DTC ads but ask questions regarding only the ad which has been manipulated to test our hypotheses. To maximize response information, the test ad will always be the last ad they see.

After viewing the ads, a structured interview will be conducted. Participants will answer questions about the high blood pressure DTC test ad they have seen. Questions will examine a number of important perceptions about the advertised product, including risk comprehension, risk recall, benefit comprehension, benefit recall, behavioral intention, noticeability of the toll-free statement, and recall of the toll-free statement.

Finally, demographic and health care utilization information will be collected. The entire procedure is expected to last approximately 20 minutes. A total of 6,000 interviews will be completed. This will be a one-time (rather than annual) information collection.

D. Participants

Data will be collected using an Internet protocol. Two samples of consumers will be recruited: One sample of individuals diagnosed with high blood pressure and another sample of consumers over the age of 21. Both groups will represent a range of education levels. Because the task presumes basic reading abilities, all selected participants must speak English as their primary language.

FDA proposes to conduct two rounds of pretesting with 700 consumers in each round to refine the questionnaire and the stimuli before collecting data for the main study.

Hypotheses

Overall, we expect effects to be stronger in the high blood pressure sample than in the general population sample, as high blood pressure sufferers will likely have higher involvement with the medical condition.

1. Risk Comprehension

This section explains the following:

- Any inclusion of the toll-free statement will reduce the comprehension of risk information.

(Risk comprehension will be highest in control condition for all analyses)

- Placement:

Conditions in which the statement is presented after the major statement and the statement is present for the whole ad will reduce comprehension least.

(After control condition, risk comprehension will be highest in conditions where statement is present for whole ad or after the major statement; risk comprehension will be lowest when statement is presented during or before the major statement).

• Wording: Type of statement will not influence risk comprehension.
• Placement x Wording: This analysis is exploratory
• Duration:
Statement will interfere with risk comprehension less when presented in the whole ad than when presented for briefer periods.
Short duration will result in lower risk comprehension than long duration because it will be displayed for a short time, causing attention to shift twice in quick succession

(Risk comprehension highest in control condition, followed by whole ad condition followed by long duration, and, finally, short duration)
• Prominence: Prominence of statement will not affect risk comprehension.

2. Benefit Comprehension

This section explains the following:
• Any inclusion of the toll-free statement will reduce the comprehension of benefit information.
(Benefit comprehension will be highest in control condition for all analyses)
• Placement:
Conditions in which the statement is presented after the major statement and the statement is present for the whole ad will reduce comprehension least.
(After control condition, benefit comprehension will be highest in conditions where statement is present for whole ad or after the major statement; benefit comprehension will be lowest when statement is presented during or before the major statement).
• Wording: Type of statement will not influence benefit comprehension.
• Placement x Wording: This analysis is exploratory
• Duration:
Statement will interfere with benefit comprehension most when presented in the whole ad than when presented for briefer periods after the major statement.
No prediction of differences between short and long duration of statement on benefit comprehension.

(Benefit comprehension highest in control condition, followed short and long duration conditions together, followed by condition where statement is present in whole ad)
• Prominence: Prominence of statement will not affect benefit comprehension.

3.Toll-Free Statement Recall

This section explains the following:
• Toll-free statement recall will be higher in any condition where it is included in the ad.
• Placement:
Recall of statement will be highest in conditions where it is on screen for the whole ad and where it is placed after the major statement.
• Wording: This analysis is exploratory.
• Placement x Wording: This analysis is exploratory
• Duration:
Recall of the statement will be greatest in the condition where it is present for the whole ad, followed by the condition in which it is located after the major statement.
• Prominence:
Recall of the statement will be higher in the Extra Prominent condition than in the condition in which it is only in super form after the major statement.

4. Behavioral Intention

This section explains the following:
• This analysis is exploratory and for completeness.

Analysis Plan

We will conduct the following analyses separately for the general population sample and the high blood pressure sufferers sample. Once these separate analyses are completed, we will conduct the analyses with the samples combined, using the type of sample as a moderator variable to determine whether any effects differed significantly between the groups.

Part 1: We will test whether there is a main effect of placement on our main dependent variables (i.e., risk comprehension, benefit comprehension, and behavioral intention) using one-way Analysis of Variants (ANOVAs) (four placement conditions, plus control condition). We will conduct ANOVAs that assess the main effect of placement (four placement conditions), the main effect of statement type, and the interaction between placement and statement type on our main dependent variables. We will examine logistic regression models predicting toll-free statement recall from placement (four placement conditions, plus control condition), and from placement, statement type, and the interaction between placement and statement type. We will conduct these analyses both with and without covariates (e.g., demographic and health characteristics) included in the model. In addition, we will test whether any main effects are moderated by other measured variables (e.g., time spent viewing the ad, demographic and health characteristics). If any main effects are significant, we will conduct pairwise-comparisons to determine which conditions are significantly different from one another. We will also conduct planned comparisons in line with our hypotheses (see *Hypotheses* in this document).

Part 2: We will test whether there is a main effect of duration on our main dependent variables using one-way ANOVAs and logistic regression models. We will examine these analyses both with and without covariates (e.g., demographic and health characteristics) included in the model. In addition, we will test whether the main effect is moderated by other measured variables (e.g., time spent viewing the ad, demographic and health characteristics). If the main effect is significant, we will conduct pairwise-comparisons to determine which conditions are significantly different from one another. We will also conduct planned comparisons in line with our hypotheses (see *Hypotheses* in this document).

Part 3: We will test whether there is a main effect of prominence on our main dependent variables using one-way ANOVAs and logistic regression models. We will examine these analyses both with and without covariates (e.g., demographic and health characteristics) included in the model. In addition, we will test whether the main effect is moderated by other measured variables (e.g., time spent viewing the ad, demographic and health characteristics).

5. Pretesting of Stimuli

The key to our study is the reasonableness and appropriateness of the stimuli we use to approximate television DTC prescription drug ads. Because the particular images are subjective, we will conduct extensive pretesting with consumers similar to our main target audience. This pretesting will involve 700 individuals in 2 waves. The purpose of the pretesting is to ensure that the stimuli are perceived as realistic. During the pretesting stage, the primary dependent variable will be the success of the particular manipulation. The pretesting will allow us to make changes in the ad stimuli before the actual study commences, thus making participants' time more valuable.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screener, pretesting	2,800	1	2,800	.03	84
Questionnaire, pretesting	1,400	1	1,400	.25	350
Screener, study	12,000	1	12,000	.03	360
Questionnaire, study	6,000	1	6,000	.33	1,980
Total					2,774

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

IV. References

1. Chandler, P. and J. Sweller, ''Cognitive Load Theory and the Format of Instruction,'' *Cognition and Instruction*, 8(4), 293–332, 1991.

Dated: August 11, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–19782 Filed 8–17–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0637]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Financial Disclosure by Clinical Investigators

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Financial Disclosure by Clinical Investigators'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, *Elizabeth.Berbakos@fda.hhs.gov,* 301–796–3792.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 22, 2009 (74 FR 18385), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0396. The approval expires on August 31, 2012. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: August 11, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–19788 Filed 8–17–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0354]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Mental Models Study of Farmers' Understanding and Implementation of Good Agricultural Practices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Mental Models Study of Farmers' Understanding and Implementation of Good Agricultural Practices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, *Daniel.Gittleson@fda.hhs.gov*, 301–796–5156.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 24, 2009 (74 FR 12364), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0639. The approval expires on July 31, 2012. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: August 11, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–19787 Filed 8–17–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0043]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Irradiation in the Production, Processing, and Handling of Food'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information

Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, *Daniel.Gittleson@fda.hhs.gov,* 301–796–5156.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 21, 2009 (74 FR 23865), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0186. The approval expires on July 31, 2012. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: August 11, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. 09–19785 Filed 8–17–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0657]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Recommendations for Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Recommendations for Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, *Daniel.Gittleson@fda.hhs.gov* 301–796–5156.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 17, 2009 (74 FR 17868), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0583. The approval expires on July 31, 2012. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: August 11, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–19784 Filed 8–17–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0336]

Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2010; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice entitled that appeared in the **Federal Register** of August 3, 2009 (74 FR 38429). The document announced the Fiscal Year 2010 fee rates for the Animal Drug User Fee Act. The document was published with a typographical error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3917.

SUPPLEMENTARY INFORMATION: In FR Doc. E9–18459, appearing on page 38429 in the **Federal Register** of Monday, August 3, 2009, the following correction is made:

1. On page 38429, in the third column, in the first sentence of the last paragraph under **Background**, ''$209,400'' is corrected to read ''$290,400''.

Dated: August 12, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–19779 Filed 8–17–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel ZGM1–GDB–X–C1.

Date: September 8, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John J. Laffan, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 10, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19624 Filed 8–17–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0247]

Food and Drug Administration Transparency Task Force; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until November 6, 2009, the comment period for the notice of public meeting and request for comments that appeared in the **Federal Register** of June 3, 2009 (74 FR 26712). In the notice of public meeting and request for comments, FDA's Transparency Task Force requested comments on ways in which FDA can make useful and understandable information about FDA activities and decision making more readily available to the public. The agency is taking this action because the agency is planning a second public meeting this fall and is reopening the comment period to allow interested persons additional time to submit comments.

DATES: Submit written or electronic comments by November 6, 2009.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. All such comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Afia Asamoah, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, rm. 2208, Silver Spring, MD 20993, 301–796–4625, FAX: 301–847–3531, e-mail: *Afia.Asamoah@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 3, 2009 (74 FR 26712), FDA published a notice of public meeting and request for comments on ways in which FDA can make useful and understandable information about FDA activities and decisionmaking more readily available to the public, in a manner compatible with the agency's goal of protecting confidential information, as appropriate. Interested persons were given until August 7, 2009, to submit comments. The agency is planning to hold a second meeting in the fall of 2009 about these issues and is reopening the comment period until November 6, 2009. FDA has also established an online blog at *http://fdatransparencyblog.fda.gov* in which interested persons may provide feedback on specific topics. The blog is expected to run through November 2009.

Interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments to *http://www.reguations.gov* or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 12, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–19778 Filed 8–17–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Public Health Informatics (BSC, NCPHI)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Time and Date: 8:30 a.m.–5 p.m., September 2, 2009.

Place: Hyatt Regency, 265 Peachtree Street NE., Atlanta, Georgia, 30303 *Tel:* (404) 577–1234, *Fax:* (404) 588–4137.

Maps & Directions

This meeting will also be teleconferenced: Toll Free Number: (866) 713–5586, Participant's pass code 4624038.

Status: Open to the public, limited only by the space available.

Purpose: The committee shall advise the Secretary, HHS, and the Director, CDC, concerning strategies and goals for the programs and research within the national centers; shall conduct peer-review of scientific programs; and monitor the overall strategic direction and focus of the national centers. The board, after conducting its periodic reviews, shall submit a written description of the results of the review and its recommendations to the Director, CDC. The board shall perform second-level peer review of applications for grants-in-aid for research and research training activities, cooperative agreements, and research contract proposals relating to the broad areas within the national center.

Matters to be Discussed: The board will discuss BSC, NCPHI-related matters, including an update on NCPHI Programs and other BSC-related activities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dr. Scott McNabb, National Center for Public Health Informatics, CDC, 1600 Clifton Road, NE., Mailstop E–78, Atlanta, Georgia 30333, Telephone (404) 498–6427, Fax (404) 498–6235.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and the Agency for Toxic Substance and Disease Registry.

Dated: August 10, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–19754 Filed 8–17–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: September 10–11, 2009.

Closed: September 10, 2009, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Open: September 11, 2009, 8:30 a.m. to adjournment.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, PhD, Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC6200, Bethesda, MD 20892–6200. (301) 594–4499. *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/about/advisory_council.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 10, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19663 Filed 8–17–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0376]

Office of the Commissioner Reorganization; Statement of Organizations, Functions, and Delegations of Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has reorganized the Office of the Commissioner (OC). This reorganization includes the organizations and their substructure components as listed in this document. This reorganization includes the re-alignment of four Deputy-level offices within the Office of the Commissioner: the Office of the Chief Scientist; the Office of Administration (formerly titled the Office of Operations); the Office of Foods; and the Office of Policy, Planning and Budget (formerly titled the Office of Policy, Planning and Preparedness).

FOR FURTHER INFORMATION CONTACT: Vanessa Starks, Office of Management Programs (HFA–400), Food and Drug Administration, 5600 Fishers Lane, rm. 6B–42, Rockville, MD 20857, 301–827–1463.

Office of the Chief Scientist: The organizational change will allow the agency to better focus the science and research activities under the Chief Scientist. Re-alignments under the Office of the Chief Scientist will include the Office of Counter-Terrorism and Emerging Threats, Office of Critical Path Programs, Office of Scientific Integrity, and the Office of Science and Innovation.

Office of Administration: The Office of Operations will be re-titled the Office of Administration. The Office of Administration will be restructured to strengthen agency wide management programs, budget and shared services operations, as well as the Office of the Commissioner's executive operations. Realignments of the Office of Acquisitions and Grants Services, the Office of Executive Operations, the Office of Information Management, the Office of Management, the Office of Equal Employment Opportunity and Diversity Management, and the establishment of the Office of Financial Operations.

Office of Foods: The Office of Foods will be realigned from the Office of Operations and will report directly to the Commissioner.

Office of Policy, Planning and Budget: The Office of Policy, Planning and Preparedness will be retitled the Office of Policy, Planning and Budget. The realignments from the Office of Policy, Office of Planning, and the Office of Budget Formulation (formerly titled the Office of Budget Formulation and Presentation, Office of Operations).

[Part D, Chapter D–B, (Food and Drug Administration), the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 60 FR 56605, November 9, 1995, 64 FR 36361, July 6, 1999, 72 FR 50112, August 30, 2007) is amended to reflect the restructuring of the Office of the Commissioner (OC), Food and Drug Administration (FDA) as follows].

I. Under Part D, Food and Drug Administration, delete the Office of Commissioner in its entirety and replace with the following:

DA.10 ORGANIZATION. The Food and Drug Administration (FDA) is headed by the Commissioner, Food and Drug, and includes the following organizational units:

Office of the Commissioner
Office of the Chief Counsel
Office of the Chief of Staff
Office of Legislation
Office of Policy, Planning and Budget
Office of Counselor to the Commissioner
Office of Women's Health
Office of Special Medical Programs
Office of External Affairs
Office of Foods
Office of the Chief Scientist
Office of International Programs
Office of Administration
Office of Equal Employment Opportunity and Diversity Management
Center for Tobacco Products

DA.20 FUNCTIONS.

Office of the Commissioner: The Office of the Commissioner (OC) includes the Commissioner and Deputy Commissioner who are responsible for the efficient and effective implementation of the FDA mission.

Office of the Chief Counsel: The Office of the Chief Counsel (OCC) is also known as the Food and Drug Division, Office of the General Counsel, Department of Health and Human Services. While administratively within the Office of the Commissioner, the Chief Counsel is part of the Office of the General Counsel of the Department of Health and Human Services.

1. Is subject to the professional supervision and control of the General Counsel, Department of Health and Human Services (DHHS), and represents FDA in court proceedings and administrative hearings with respect to programs administered by FDA.

2. Provides legal advice and policy guidance for programs administered by FDA.

3. Acts as liaison to the Department of Justice and other Federal agencies for programs administered by FDA.

4. Drafts or reviews all proposed and final regulations and **Federal Register** notices prepared by FDA.

5. Performs legal research and gives legal opinions on regulatory issues, actions, and petitions submitted to FDA.

6. Reviews proposed legislation affecting FDA that applies to HHS or on which Congress requests the views of the Department.

7. Provides legal advice and assistance to the Office of the Secretary on matters within the expertise of the Chief Counsel.

Office of the Chief of Staff:

1. Advises and provides integrated policy analysis and strategic consultation to the Commissioner, Deputy Commissioners, and other senior FDA officials on activities and issues that affect significant agency programs, projects and initiatives. Often this function involves the most difficult problems, crisis situations and extremely complex issues of the agency.

2. Provides leadership, coordination and management of the Commissioner's priority policies and issues across the Office of the Commissioner and agency wide. Identifies triages, supervises and tracks related actions from start to finish in conjunction with senior leadership across FDA.

3. Serves as the principal liaison to the Department of Health and Human Services (DHHS) and coordinates and manages activities between FDA and DHHS. Works with the FDA Centers/Offices to ensure assignments or commitments made related to these activities are carried out.

4. Provides direct support to the Commissioner, Deputy Commissioners, and other FDA senior staff including briefing materials, background information for meetings, responses to outside inquiries, and maintenance and control of the Commissioner's working files.

5. Provides top level leadership and guidance on issues and actions tied to the agency's communications with the Public Health Service, DHHS, and the White House, including correspondence for Assistant Secretary for Health and Secretarial signatures; controls for all agency public correspondence directed to the Commissioner; and the development and operation of tracking systems designed to identify and resolve early warnings and bottleneck problems with executive correspondence.

Executive Secretariat:

1. Advises the Commissioner and other key agency officials on activities that affect agency wide programs, projects, and initiatives. Informs appropriate agency staff of the decisions and assignments made by the Commissioner, the Deputy Commissioners, the Chief of Staff and the Associate Commissioners.

2. Develops and maintains management information necessary for monitoring the Commissioner's and agency's goals and priorities.

3. Assures that materials in support of recommendations presented for the Commissioner's consideration are comprehensive, accurate, fully discussed and encompass the issues involved.

4. Provides correspondence control for the Commissioner and controls and processes all agency public correspondence directed to the Commissioner. Develops and operates tracking systems designed to identify and resolve early warnings and bottleneck problems with executive correspondence.

5. Provides direct support to the Commissioner, Deputy Commissioners, Chief of Staff and Associate Commissioners including briefing materials, background information for meetings, responses to outside inquiries, and maintenance and control of the Commissioner's working files.

6. Performs agency wide assignments involving complex problems and issues related to agency programs, strategies and activities, including preparation of special reports for the Department.

7. Coordinates the agency's communications with the Public Health Service, DHHS, and the White House including correspondence for the Assistant Secretary for Health and Secretarial signatures.

Office of Legislation:

1. Advises and assists the Commissioner and other key agency officials concerning legislative needs, pending legislation and oversight activities that affect FDA.

2. Serves as the focal point for overall legislative liaison activities within FDA and between FDA, the Department, PHS and other agencies; and analyzes the legislative needs of FDA and drafts or develops legislative proposals, position papers, and departmental reports on proposed legislation for approval by the Commissioner.

3. Advises and assists members of Congress and congressional committees and staffs in consultation with the Office of the Secretary on agency actions, policies, and issues related to legislation which may affect FDA.

Office of Policy, Planning and Budget:

1. Plans, organizes, and carries out annual and multi-year budgeting in support of FDA's public health mission and programs.

2. Produces three major budget submissions a year (to Health and Human Services (HHS) in June, Office of Management and Budget (OMB) in September, and to Congress in January).

3. Develops and presents required background exhibits, MAX input, and supplemental requests as necessary; coordinates graphic material for presentations; and coordinates budgetary passback appeals at each level.

4. Tracks Appropriation activities and bills affecting FDA through the legislative process.

5. Responds to requests for budget information and special reports and exhibits.

6. Reviews and analyzes potential budgetary impacts of congressional or administrative proposals, providing expert opinion and recommendations.

7. Clears documents leaving the agency that have budgetary impact or resource information.

8. Tracks special initiatives and agency cross-cutting programs.

Office of Policy:

1. Leads agency wide strategic policy initiatives.

2. Advises and assists the Commissioner and other key agency officials on matters relating to agency policy, and on regulations and guidance development.

3. Serves as the lead agency focal point for developing broad agency policy.

4. Provides strategic policy direction and develops innovative policies for FDA to more effectively and efficiently protect and promote public health.

5. Develops significant and cross-cutting policy and engages in strategic problem solving.

6. Oversees, directs, and coordinates the agency's rulemaking and guidance development activities.

7. Serves as the agency focal point for communications and policies with regard to development of regulations and guidance.

8. Initiates new and more efficient systems and procedures to accomplish agency goals in the rulemaking and guidance development processes.

9. Reviews agency policy documents to ensure consistency in statements regarding agency policies.

10. Provides strategic policy direction for agency budget formulation.

Policy Development and Coordination Staff:

1. Leads the development of cross-cutting or broad agency policies and serves as a cross-agency think tank to develop innovative policies.

2. Advises and assists the Commissioner and other key agency officials concerning information that may affect current or proposed FDA policies.

3. Advises the Commissioner and other key agency officials on the formulation of broad agency policy.

4. Engages in strategic problem solving.

5. Serves as agency liaison for intergovernmental policy development.

6. Coordinates the development, review, and clearance of regulations and guidances.

7. Manages the agency's regulation, guidance review and clearance processes.

8. Reviews policy documents to assess and achieve consistency in policies across documents.

9. Establishes procedures for agency policy formulation and coordinates policy formulation activities throughout the agency.

10. Negotiates the resolution of policy issues involving more than one component of the agency.

11. Coordinates the review and analysis of policies.

12. Initiates and participates in interagency discussions on agency regulations, plans, and policies to improve coordination of Federal, State, or local agencies on a specific regulation or in developing an effective alternative approach.

13. Serves on agency task forces that are critical elements in the initiation, study, and resolution of priority policy issues.

Regulations Policy and Management Staff:

1. Serves as the agency's focal point with the Department of Health and Human Services, Office of Management and Budget, and other Federal agencies for policies and programs concerning regulations development and for the receipt of and response to other agency comments on FDA policy documents.

2. Reviews proposed regulations, final regulations, and other agency documents to be published in the **Federal Register**. Ensures regulations are necessary; consistent with established agency policy; clearly written; enforceable; coordinated with other agency components, the Office of the Chief Counsel, and Federal, State, and local government agencies; appropriately responsive to public participation requirements and applicable executive orders; and responsive to any applicable requirements for assessment of economic and environmental effects.

3. Coordinates, with other agency components, the evaluation of existing regulations to determine whether they are efficiently and/or effectively accomplishing their intended purpose. Identifies and makes recommendations to address regulations that require revision to correspond with current standards and those that should be revoked due to obsolescence.

4. Resolves regulatory policy disagreements between agency components during the preparation of **Federal Register** documents.

Regulations Editorial Section:

1. Serves as FDA's official liaison within the Office of the Federal Register. Edits, processes, and prepares finished manuscript material for the issuance of agency proposed and final regulations and other documents published in the **Federal Register**.

2. Provides all **Federal Register** document development support functions (including cross-referencing, record retention, incorporation by reference, document tracking, and agency master print books of current Code of Federal Regulations (CFR) materials. Controls numbering and organization of agency codified material to ensure proper structure of regulations being issued.

Office of Planning:

1. Leads agency-wide strategic planning initiatives.

2. Advises and assists the Commissioner and other key agency officials concerning the performance of the FDA planning, evaluation and economic analysis activities.

3. Develops program and planning strategy through analysis and evaluation of issues affecting policies and program performance.

4. Develops, installs, and monitors the agency wide planning system including the long-term plans, strategic action plans, functional and business bioinformatics plans.

5. Leads the FDA Strategic Planning Council.

6. Consults with and supports the agency preparation of legislative proposals, proposed rulemaking, and technical assistance to Congress.

7. Conducts operations research, economic, and special studies as a basis for forecasting trends, needs, and major problems requiring solutions, and provides assistance and consultation in these areas to operating units.

8. Evaluates impact of external factors on FDA programs, including industry economics, consumer expectations, and prospective legislation. As necessary, recommends new programs or changes in existing programs and program priorities.

9. Develops FDA evaluation programs and systems to evaluate overall FDA program accomplishments against objectives and priorities, recommending changes as necessary.

10. Estimates marginal impact of funding changes on FDA performance and ability to protect public health.

11. Leads effort to analyze agency business processes for process modernization and bioinformatics support.

12. Acts as FDA liaison to HHS and other Federal activities under the Office of the National Coordinator for Health Information Technology.

13. Leads and coordinates agency-wide effort to plan, evaluate and improve FDA risk communication.

14. Leads and coordinates the Prescription Drug User Fee Act program initiative for Performance Management and quality systems studies.

Planning Staff:

1. Performs and coordinates the following agency's performance planning functions:

Represents the HHS in and OMB performance planning activities.

Coordinates and reports the agency's performance planning and achievements in accordance with the Government Performance and Results Act.

Consults with the Office of Budget Formulation and collaborates with agency components in preparing and reporting the performance sections of the agency's budget.

Coordinates the agency long range strategic and performance planning in line with the HHS strategic plan.

Maintains, analyzes and reports agency-wide performance information and achievements to external stakeholders.

2. Performs and coordinates the following agency's program performance tracking and management functions:

Coordinates the development and improvement of the agency's program performance measures, data and goals on a continuous basis to ensure alignment to agency's missions and objectives.

Coordinates the agency short and long range performance planning objectives and processes.

Assists and consults with agency components in their performance planning for data, trends, targets and achievements.

Maintains, analyzes and reports agency-wide quarterly program performance information.

Performs and coordinates program advisory, planning, and analysis services.

Assists agency components in analyzing and improving their planning processes, performance objectives and goals, as requested.

Works with agency components as requested to identify and implement internal and external best practices to improve overall performance.

Analyzes information by applying mathematical disciplines and principles to make available data and facilitate improved decision-making.

Conducts special operational analysis and planning related studies as requested.

Conducts analysis of resource requests submitted by agency components and develops recommendations for the Commissioner, to fulfill agency and agency requirements.

Staffs the FDA Strategic Planning Council.

Provides operations analysis and project management support to the agency committees and initiatives as needed.

Provides operations analysis and project management support to the Prescription Drug User Fee program.

Evaluation Staff:

1. Prepares annual User Fee performance reports to Congress.
2. Performs agency program and policy evaluations and analytical studies. Recommends alternative courses of action to increase effectiveness of agency allocation of resources and to improve program and project performance.
3. Performs analyses of significantly broad agency issues identified in the planning process.
4. Recommends and/or implements steps to resolve these issues.
5. Develops the annual evaluation plan for the agency and coordinates with HHS.
6. Conducts special evaluations, analytical and economic-related studies, in support of agency policy development and in resolution of broad agency problems.
7. Evaluates the impact of external factors on agency programs, including consumer expectations and prospective legislation.
8. Evaluates the impact of agency operations and policies on regulated industries and other agency constituents.
9. Provides process expertise to agency components in designing consensus sessions with internal and external stakeholders.
10. Assists and consults with agency components on the design and execution of key program and process re-inventions.
11. Assists and consults with agency scientific review components to enhance transparency, consistency, accountability, and continuous improvement of review processes.
12. Facilitates cross-organizational sharing of key program and process improvements.

Economics Staff:

1. Performs economic analyses for use by agency officials in decisions regarding agency policies.
2. Serves as the agency's chief resource for economic information.
3. Collects and interprets economic data relevant to the agency's public-health mission.
4. Performs and reviews benefit-cost and cost-effectiveness analyses of agency regulations.
5. Advises and assists the Commissioner and other key agency officials on a day to day basis concerning economic factors relating to current and proposed agency activities.
6. Provides economic research material for use by agency officials in preparing testimony before congressional committees and in developing replies to inquiries directed to the agency.
7. Conducts economic studies of FDA related industries as a basis for forecasting trends, needs, and major problems affecting the agency.
8. Provides agency representation to Congress, OMB, HHS, and others, as appropriate, on economic issues relating to agency regulations and other current and proposed actions.

Risk Communication Staff:

1. Coordinates development of agency policies on risk communication practices.
2. Coordinates agency strategic planning activities concerning risk communications.
3. Coordinates agency research agenda for risk communication methods.
4. Facilitates development and sharing of risk communication best practices and standard operating procedures.
5. Conducts risk communications research on methodological and cross-cutting issues.
6. Leads management and coordination of the FDA Risk Communication Advisory Committee.

Business Process Planning Staff:

1. Coordinates the agency's business process planning function in support of business process improvement and automation efforts.
2. Provides business process planning, operations analysis and project management support to the FDA Bioinformatics Board and its associated Business Review Boards.
3. Coordinates and maintains the strategic and performance layers of the Enterprise Architecture, in support of the Office of Information Management.
4. Establishes and maintains agency standards for business process modeling.
5. Provides business process modeling, analysis, and planning services to agency programs and initiatives as needed.

Office of Budget Formulation:

1. Plans, organizes, and carries out annual and multi-year budgeting in support of FDA's public health mission and programs.
2. Produces three major budget submissions a year (to Health and Human Services (HHS) in June, Office of Management and Budget (OMB) in September, and to Congress in January).
3. Develops and presents required background exhibits, MAX input, and supplemental requests as necessary; coordinates graphic material for presentations; and coordinates budgetary passback appeals at each level.
4. Tracks Appropriation activities and bills affecting FDA through the legislative process.
5. Responds to numerous requests for budget information and special reports and exhibits.
6. Reviews and analyzes potential budgetary impacts of congressional or administrative proposals, providing expert opinion and recommendations.
7. Clears documents leaving the agency that have budgetary impact or resource information.
8. Tracks special initiatives and agency cross-cutting programs.

Office of the Counselor to the Commissioner:

1. Formulates and renders advice to the Commissioner related to policy development, interpretation and integration that cuts across program lines or which is not well defined.
2. Provides a leadership role in advocating for and advancing the Commissioner's priorities.
3. Reviews recommendations for actions and reviews other materials to ensure that all points of view and program interests are developed for consideration and fully analyzed.
4. Provides top level leadership for the development of, and management of emergency and crisis management policies and programs for FDA to ensure that a structure exists for FDA to respond rapidly to an emergency or crisis situation in which FDA-regulated products need to be utilized or deployed.
5. Coordinates FDA participation in internal and external counter-terrorism and emergency exercises.
6. Implements the continuity of operation plans and operation of the emergency and the crisis operation center.
7. Coordinates agency evaluation of emergency and crisis situations to determine appropriate internal and external referrals for further action.

Office of Crisis Management:

1. Serves as the first responder for Food and Drug Administration (FDA) in

emergency and crisis situations involving FDA regulated products or in situations in which FDA regulated products are needed to be utilized or deployed.

2. Assists in the development of, and will manage, emergency and crisis management policies and programs for FDA to ensure that a structure exists to respond rapidly to an emergency or crisis situation.

3. Serves as agency emergency coordinator to HHS Office of the Assistant Secretary for Preparedness and Response (OASPR) and as liaison to HHS Secretary's Office of Security and Strategic Information (OSSI). Provides OASPR situational awareness of all FDA-related emergencies and ensures that FDA's emergency operations procedures are in alignment with national and HHS procedures. Participates in OSSI intelligence briefings and provides secure fax capability for the agency.

4. Participates in international initiatives to ensure FDA's capability and readiness to work with foreign counterparts in responding to international emergencies involving or impacting FDA-regulated products and to share information with international counterparts during such emergencies.

5. Manages the FDA Emergency Operations Network Incident Management System (EON IMS), a system for capturing large amounts of near real time information about emergencies related to FDA-regulated products for use by senior agency decision makers in assessing and managing response activities. Provides Offices and Centers geographical information system maps created by EON IMS's GIS mapping component for use in strategic planning of agency emergency response activities.

6. Develops and updates agency emergency operations plans and incident specific annexes, ensuring their alignment and compliance with the National Response Framework and its Emergency Support Functions and the National Incident Management System.

7. Plans and conducts agency exercises to test emergency operations plans. Plans and coordinates FDA's participation in emergency exercises sponsored by other Departments and agencies, including national and international level exercises.

8. Oversees the FDA Emergency Call Center which provides after normal-hours service for responding to public inquiries and reports related to FDA-regulated products as well as surge capacity service for managing increased volumes of inquiries due to an event involving an FDA-regulated product.

9. Manages FDA's Emergency Operations Center (EOC), activating the EOC with augmented staffing from relevant Centers and Offices to monitor emergency situations, triage complaints and alerts, issue mission assignments to organizational components, coordinate overall agency response operations, and communicate with external partners requesting technical and material support. FDA's EOC serves as the central point of contact with the Department of Homeland Security's National Operations Center, DHHS Secretary's Operation Center, CDC Emergency Operations Center, USDA/FSIS Situation Room, and other Federal EOCs as appropriate.

10. Coordinates agency evaluation of emergency responses and crisis situations to determine appropriate internal and external referral for further action and recommended changes in agency procedures.

11. Oversees the work of the Office of Emergency Operations.

Office of Emergency Operations:

1. Serves as the agency focal point for emergency preparedness and response operating the 24-hour, 7-day-a-week emergency response system.

2. Provides support and assistance to Food and Drug Administration (FDA) offices in managing the agency's response to emergency incidents and situations involving FDA regulated products and disasters.

3. Assists in the development and coordination of the agency's emergency preparedness and response activities.

4. Serves as the agency focal point for the review and analysis of preliminary information about threats and hazards, and assists in the early recognition of emergencies, outbreaks, natural disasters, and terrorism or other criminal acts, in direct coordination with individual headquarters and field emergency coordination units.

5. Coordinates FDA emergency activities with other Federal agencies, State, local and foreign government officials and industry associations.

6. Identifies and advocates emergency training needs for FDA personnel and participates in the design, implementation, and presentation of the training programs.

7. Provides guidance to agency emergency response staff in the use of the Incident Command System to manage single or multi-agency response activities.

8. Represents the agency at interagency, intra-agency, State, local and foreign government and industry association meetings and conferences on emergency preparedness and response.

9. Manages the National Consumer Complaint System which monitors reports of problems with FDA-regulated products for potential emergencies.

10. Participates in daily National Biosurveillance Integration Center conference calls sponsored by Department of Homeland Security to provide a secure forum for interagency information sharing for early recognition of biological events of national concern, both natural and man-made, to make a timely response possible.

11. Oversees and tests the agency's ability to communicate through the Government Electronic Telecommunications Service (GETS) which provides global telecommunications (secure voice, facsimile and data communications) capability for organizations that perform national security and emergency preparedness functions.

Office of Women's Health:

1. Serves as the principal advisor to the Commissioner and other key agency officials on scientific, ethical and policy issues relating to women's health.

2. Provides leadership and policy direction for the agency regarding issues of women's health and coordinates efforts to establish and advance a women's health agenda for the agency.

3. Monitors the inclusion of women in clinical trials and the implementation of guidelines concerning the representation of women in clinical trials and the completion of gender analysis.

4. Identifies and monitors the progress of crosscutting and multidisciplinary women's health initiatives including changing needs, areas that require study and new challenges to the health of women as they relate to FDA's mission.

5. Serves as the agency's liaison with other agencies, industry, and professional associations with regard to the health of women.

Office of Special Medical Programs:

1. Serves as the agency focal point for special programs that are cross-cutting and medical in nature.

2. Manages the activities of the agency's effort to ensure that medical products used in pediatric applications are properly overseen.

3. Oversees the implementation of the orphan products provisions of the Federal Food, Drug and Cosmetic Act.

4. Administers and manages the Office Good Clinical Practice.

5. Provides executive leadership to the Office of Combination Products to ensure that appropriate jurisdictional decisions are made for the regulation of those products.

Office of Good Clinical Practice:

1. Advises and assists the Commissioner, and other key officials on Good Clinical Practice (including human subject protection) issues arising in clinical trials regulated by the FDA that have an impact on policy, direction, and long-range goals.

2. Supports and administers FDA's Human Subject Protection (HSP)/ Bioresearch Monitoring (BIMO) Council that manages and sets agency policy on Good Laboratory Practices, Bioresearch Monitoring, and Good Clinical Practices.

3. Represents the agency to other government agencies, State and local governments, industry, academia, consumer organizations, Congress, national and international organizations, and the scientific community on Good Clinical Practice policy issues.

4. Provides leadership and direction on human subject protection and Good Clinical Practice matters and stimulates the application of these principles in the FDA.

5. Evaluates the adequacy of Good Clinical Practice resources available to the agency and initiates action as appropriate.

6. Coordinates agency policies related to the protection of human subjects in research, including institutional review and ethical considerations.

7. Plans training programs for external use and for FDA staff on the agency's Good Clinical Practice policies.

8. Coordinates and provides oversight of Good Clinical Practice policy working groups developed on the recommendation of the agency HSP/ BIMO Council.

9. Fosters the science of bioresearch monitoring within the Centers and the Office of Regulatory Affairs and coordinates for the Office of the Commissioner.

10. Serves as the agency coordinating point for Good Clinical Practice regulation, harmonization, and outreach activities.

11. Serves as liaison between the agency's HSP/BIMO Council and the agency's Management Council.

12. Coordinates and assists in implementation of regulations, policies, operational initiatives, and program priorities related to clinical bioresearch monitoring as developed by the HSP/ BIMO Council.

13. Monitors agency activities and leads the development of a quality assurance and quality improvement program to ensure uniform application of clinical bioresearch monitoring policies across the agency.

14. Serves as a liaison with other Federal agencies and outside organizations, the regulated industry, and public interest groups on clinical bioresearch monitoring policy and regulatory matters.

Office of Combination Products:

1. Serves as the agency focal point for combination products (i.e., drug-device, drug-biologic, device-biologic or drug-biologic-device products).

2. Serves as the agency Product Jurisdiction Office and administers 21 CFR Part 3. (Assigns agency centers with primary jurisdiction for combination products.)

3. Advises the Commissioner and other key agency officials on policy formulation, execution, cross-cutting and precedent setting issues involving combination products.

4. Develops regulations, guidances, policies, procedures, and processes to facilitate the agency's regulation, review, and oversight of combination products.

5. Reviews and updates agreements, guidance or practices specific to assignment of combination products. Prepares reports to Congress on the activities and impact of the Office.

6. Serves as the focal point for employees and stakeholders to resolve issues arising during assignment, premarket review or postmarket regulation of combination products.

7. Ensures timely and effective premarket review by overseeing the timeliness of and coordinating reviews involving more than one agency center.

8. Ensures consistency and appropriateness of postmarket regulation of combination products.

9. Resolves disputes presented regarding the timeliness of the premarket review of a combination product.

10. Advises the Chief Scientist on disputes presented regarding the substance of the premarket review of a combination product.

11. Makes determinations as to whether an individual component product will be regulated as a human drug, human biologic, or human medical device.

Office of Orphan Products Development

1. Manages the implementation of the provisions of the Orphan Drug Act and its amendments and manages a program to encourage the development of drugs of limited commercial value for use in rare or common diseases and conditions.

2. Develops and communicates agency policy and makes decisions on approval of sponsor requests and incentives under the Federal Food, Drug, and Cosmetic Act, including orphan drug protocol assistance per section 525, orphan drug designation per section 526, orphan drug exclusivity per section 527, orphan drug grants and contracts to support clinical research and other areas of agency policy related to the development of products for rare disorders.

3. Represents the Commissioner or serves as the agency's principal authority and spokesperson to the PHS Orphan Products Board, other governmental committees and industry, professional, and consumer associations, requesting agency participation in orphan product development activities.

4. Reviews investigational new drug and biologics applications and investigational device exemptions to locate the existence of products under investigational study that show evidence of effectiveness for rare or common diseases but lack commercial sponsorship. Assists sponsors, researchers, and investigators in communicating with agency regulatory officials and expediting solutions to problems in obtaining investigational or market approval status.

5. Manages an extramural program of clinical research to evaluate safety and effectiveness of orphan products by funding grants and contracts, requesting applications for funding, organizing peer review of applications, monitoring and guiding investigators, and evaluating study results.

Office of Pediatric Therapeutics:

1. Coordinates and facilitates all activities of the Food and Drug Administration that may have any effect on the population, the practice of pediatrics, or may in any way involve pediatric issues.

2. Coordinates the review of and communicates internally and externally any report of an adverse event of a drug which received pediatric exclusivity.

3. Provides for the review of adverse event reports and other new safety information and obtains recommendations whether FDA should take action.

4. Coordinates with all Department of Health and Human Service and FDA employees who exercise responsibilities relating to pediatric therapeutics.

5. Serves as the FDA focal point for all issues involving ethics with respect to the pediatric populations.

6. Coordinates with the Office of International Programs while serving as the agency focal point for international pediatric activities.

Office of External Affairs:

1. Advises the Commissioner, Deputy Commissioners and other key agency

officials on FDA's communications to the media, Congress, and the general public on issues that affect agency-wide programs, projects, strategies, partnerships and initiatives.

2. Advises and assists the Commissioner and other key officials on all public information programs; acts as the focal point for disseminating news on FDA activities and as a liaison with the Public Health Service and the Department on public information programs.

3. Advises the Commissioner, Deputy Commissioners and other senior staff throughout FDA on sensitive and controversial programs and initiatives that impact external stakeholder groups.

4. Serves as an information resource to FDA and provides advice to the Commissioner and other key agency officials on matters related to serious and life-threatening diseases; patient advocacy, and health professional organizations; minority health and other special health issues.

Office of External Relations:

1. Advises the Commissioner, Deputy Commissioners and other key agency officials on agency-level activities and issues that affect agency wide programs, projects, strategies, partnerships, and initiatives.

2. Advises the Commissioner, Deputy Commissioners and senior staff throughout FDA on sensitive and controversial programs and initiatives that impact external stakeholder groups.

3. Coordinates activities involving emergency or crises situations and resolves complex problems and issues related to agency programs that are sensitive and controversial which impact upon agency relations with other Federal agencies and foreign governments.

4. Oversees and directs the agency's ombudsman and editorial functions to ensure coherence in decision making and the efficient operation of these functions internally and across agency jurisdictions.

5. Provides leadership and direction to assure the efficient and effective planning, performance and evaluation of oversight activities.

6. Provides direction, coordination and oversight of the agency's consumer activities and serves as the agency's focal point for national consumer groups.

7. Advises the Commissioner, Deputy Commissioners and senior staff throughout FDA on sensitive and controversial programs and initiatives that impact external stakeholder groups.

8. Serves as the agency's focal point to provide direction, coordination and oversight of the agency's stakeholder relations with national consumer groups, patient advocacy organizations, health professionals, academia, trade associations, ethnic and minority groups, and Tribes.

9. Coordinates speaker requests for industry programs that cover multi-center issues; identifies potential conflict of interest speaker requests.

10. Assists in the programmatic design, development and planning with internal and external organizations regarding educational and informational activities intended to educate regulated industry.

Communications Staff:

1. Identifies consumer communication and educational requirements for the agency and creates, implements, and coordinates appropriate programs conducted through the media, agency public affairs specialists, and other communication sources.

2. Plans, designs, produces, publishes, and disseminates audiovisual materials, exhibits, posters, publications, and periodicals, including *FDA Consumer*; participates in the planning and development of all publications and audiovisual aspects of communications programs directed at mass audiences.

3. Provides centralized agency graphic arts and editorial services for public information materials.

4. Acts as the agency's public information liaison with the Department for all publications and audiovisual needs; provides prepublication clearance of publications, exhibits, and audiovisual materials in accordance with procedures established by the agency, PHS, the Department, OMB, and the White House.

Office of Public Affairs:

1. Advises and assists the Commissioner and other key officials on all public information programs; acts as the focal point for disseminating news on FDA activities and as a liaison with the Public Health Service and the Department on public information programs.

2. Plans, develops, implements, and monitors policy and programs on agency media relations, and consumer information and education programs conducted through the media, FDA's public affairs specialists, and other communications sources.

3. Plans, develops, produces, and publishes agency publications and graphic arts materials.

4. Executes Freedom of Information denial authority for the agency.

5. Directs the effective utilization of all management resources by coordinating the management, facilities, budget, and equipment resources for the Office of Public Affairs.

6. Reviews organizational, management, and administrative policies of the Office to appraise the efficiency and effectiveness of operations.

7. Identifies potential management problems and/or needs and plans, develops and conducts management studies.

8. Coordinates speaker requests for industry programs that cover multi-center issues; identifies potential conflict of interest speaker requests.

9. Assists in the programmatic design, development, and planning with internal and external organizations regarding educational and informational activities intended to educate regulated industry.

10. Advises and assists top level agency officials on electronic media matters involving mass media communications.

11. Plans, develops, and implements agency wide broadcast media strategies for disseminating regulatory and educational materials to the public through the mass media.

12. Serves as the agency focal point for preparing, clearing and disseminating electronic media requests representing agency policy and responding to electronic media inquiries; maintains liaison with broadcast media contacts.

13. Establishes policy for and coordinates all broadcast media information activities, including on-camera interviews and responses to media inquiries; prepares position and policy statements for use by agency employees in responding to broadcast media questions; tracks issues of potential interest to the media.

14. Plans and coordinates all broadcast media training for the agency.

Print Media Staff:

1. Advises and assists top level agency officials on printed press matters involving mass media communications.

2. Plans, develops, and implements agency wide print media strategies for disseminating regulatory and educational material to the public through the mass media.

3. Serves as the agency focal point for preparing, clearing, and disseminating press releases and other print media statements representing agency policy and responding to media inquiries; maintains liaison with news media and pertinent publications.

4. Establishes policy for and coordinates all print media information activities, including news interviews and responses to inquiries; prepares position and policy statements for use

by agency employees in responding to print media questions; tracks issues of potential interest to the media.

5. Coordinates the research and drafting of major public statements by the Commissioner including transmittal documents and supportive statements for use in transactions with the Department, other agencies, and the White House; provides editorial consultation and review for manuscripts, articles, and speeches written by the staff offices serving the Commissioner to ensure consistency of information and policy interpretation.

6. Compiles, publishes, and distributes the weekly FDA Enforcement Report and the FDA Public Calendar; maintains the FDA Daily Clipping Service; and coordinates the Daily Media Report.

Web Site Management Staff:

1. Responsible for the content and design of the FDA Web site (*www.fda.gov*). Develops and interprets the agency's Web policies, and serves as advocates for FDA's Web presence and catalysts for creative use of the Web by the agency.

2. Works closely, as partners, with the FDA Office of Information Resources Management (OIRM), which is responsible for the technical operations of FDA's Web site.

3. Works closely with the Web site contacts in each of the Centers and principal offices within the Office of the Commissioner (OC) to plan, coordinate, execute and evaluate the agency's Web site operations.

4. Serves as the focal point and contact with the agency, Department, and other Federal Government Web site programs and operations.

5. Provides direction, strategic planning assistance, and management coordination on agency Web site programs.

6. Establishes, manages, and monitors the implementation of agency standards and policies for information published on agency Web sites.

7. Provides Web-related information management strategy input through a collaborative effort with OIRM and the Web site operations staffs in the centers and OC.

8. Designs, develops, implements, monitors, and manages information published on the agency's Web site.

9. Delivers the agency's messages to the public through the agency's Web site.

10. Provides Web-related electronic information dissemination services to the agency and the public.

Office of Special Health Issues:

1. Serves as an information resource to FDA and provides advice to the Commissioner and other key agency officials on matters related to serious and life-threatening diseases; patient advocacy, and health professional organizations; minority health and other special health issues.

2. Coordinates interactions between FDA and health professional organizations and patient advocacy groups dealing with serious and life-threatening diseases and other special health issues.

3. Serves as a focal point to coordinate contacts between FDA and other Federal agencies to ensure effective coordination and communication on serious and life-threatening diseases and other special health issues.

4. Provides internal coordination on FDA activities related to serious and life-threatening diseases, patient advocacy and health professional organizations, and other special health issues.

5. Assists in the planning, administration, development, and evaluation of FDA policies related to serious and life-threatening diseases, patient advocacy and health professional organizations, and other special health issues.

Medwatch Staff:

1. Coordinates and implements policies and initiatives relating to human medical product adverse events, including the MedWatch Partners Program, the MedWatch Web site, and the MedWatch e-list.

2. Conducts outreach and education to health professionals, patients and the public to facilitate the reporting of serious harm and injury associated with the use of human medical products.

3. Reviews, updates, and disseminates medical product safety alerts and safety labeling changes.

Office of Foods:

1. Provides executive leadership and management to all FDA food-related programs.

2. Exercises, on behalf of the Commissioner, direct line authority over the Center for Food Safety and Applied Nutrition and the Center for Veterinary Medicine.

3. Exercises, on behalf of the Commissioner, all food-related legal authorities that the Commissioner is empowered to exercise under the Federal Food, Drug, and Cosmetic Act, as amended, the Public Health Service Act, and other applicable laws.

4. Directs efforts to integrate the programs of CFSAN, CVM, and the Office of Regulatory Affairs (ORA) and thereby ensure the optimal use of all available FDA resources and tools to improve the safety, nutritional quality and proper labeling of the food supply.

5. Directs the development of integrated strategies, plans, policies, and budgets to build FDA's food-related scientific and regulatory capacities and programs, including recruitment and training of key personnel and development of information systems.

6. Represents FDA on food-related matters in dealings with the Office of the Secretary of HHS, the Centers for Disease Control and Prevention, the U.S. Department of Agriculture, the White House and other elements of the executive branch.

7. Represents FDA on food-related matters in dealings with Congress.

8. Represents FDA on food-related matters in dealings with foreign governments and international organizations.

9. Directs FDA efforts to build an integrated national food safety system in collaboration with other Federal agencies and State and local governments.

10. Directs a program of public outreach and communications on food safety, nutrition, and other food-related issues to advance FDA's public health and consumer protection goals.

Office of the Chief Scientist:

1. Provides strategic leadership, innovation and expertise to enhance and support scientific excellence, integrity and capacity to achieve the Food and Drug Administration's public heath mission. Key activities include:

Fostering development and use of innovative technologies to meet public health needs, including through its Office of Science and Innovation, the Critical Path Initiative and cross-Center working groups.

Supporting scientific excellence and the professional development of FDA scientists in all areas (i.e. population/statistical, review, laboratory and manufacturing sciences), including through the Commissioner's Fellowship Program, continuing education, and through relationships and staff exchanges with Universities and others.

Providing strategic leadership and support for high quality, collaborative, peer-reviewed scientific activities at FDA that advance regulatory science and address important public health and regulatory issues concerning FDA regulated products, including their evaluation, quality, safety and effectiveness. This includes support for the National Center for Toxicological Research to serve as a national FDA resource for mission driven regulatory science.

Supporting scientific outreach, training, collaboration in research, development and Critical Path activities that advance FDA's mission, with other

Federal agencies, global regulatory partners, academia (e.g., through planned Centers of Excellence in Regulatory Science), innovators, and consumers.

Supporting science and public health activities to effectively anticipate and respond to emerging deliberate and natural threats to U.S. and global health and security including through the Office of Counterterrorism and Emerging Threats and a planned Center for Innovation in Medicine and Public Health.

Providing core scientific leadership and technical expertise, and ensuring agency capacity, for advanced bioinformatics activities needed to support FDA programs (e.g. scientific computing to allow analysis of large health care and safety datasets, genomic and other complex laboratory data, and simulation and modeling) . Serve as an agency and government resource for excellence, methods development, outreach and partnerships in advanced bioinformatics science.

Leading agency efforts to protect and enhance scientific integrity, and, where substantive scientific differences of opinion arise and require review at the FDA level, addressing them through appropriate processes intended to protect both FDA's mission and the integrity of its science.

Office of Counter-Terrorism and Emerging Threats:

1. Develops and implements a comprehensive counterterrorism strategy for FDA to identify and address gaps in current efforts to safeguard food and medical products from adulteration or disruption of supplies due to terrorist activities.

2. Develops and coordinates the implementation of crosscutting policies to facilitate the availability of safe and effective medical countermeasures against chemical, biological, radiological, and nuclear agents of concern.

3. Provides policy leadership for FDA's Emergency Use Authorization (EUA) activities for terrorism and public health emergencies, including emerging threats.

4. Develops and implements, in collaboration with the Centers and Offices and with external partners, comprehensive FDA plans and strategies for pandemic influenza preparedness and other emerging threats.

5. Provides policy leadership by promoting the goals and needs for counterterrorism and other emerging threats in the agency budgeting and priority-setting processes.

6. Coordinates the portfolio of FDA counterterrorism and pandemic influenza policy and planning initiatives and serves as the point of entry to the agency on counter-terrorism and emerging threats policy and planning matters.

7. On behalf of the Office of the Commissioner, facilitates intra- and inter-agency communications on counterterrorism policy and pandemic influenza preparedness.

Office of Critical Path Programs:

1. Serves as the focus for cross-center scientific and medical initiatives and policy development related to the Critical Path (CP) initiative and related activities in the Office of the Commissioner.

2. Assists the Chief Scientist in planning, executing, and monitoring projects, including, CP-related cross-center and interagency projects and collaborations with other agencies, academia, and industry as identified by the Office of the Commissioner and the Department of Health and Human Services.

3. Serves as the focus for cross center bioinformatics activities, including data management and analysis. Supports agency Bioinformatics Board and Data Councils.

4. Performs project development, project management, policy and document development and clearance, and related tasks as directed by the Chief Scientist.

5. Coordinates related administrative activities (e.g., personnel, communication, staffing, purchasing, and CP-related travel).

Office of Scientific Integrity:

1. Helps ensure consistent understanding, application and implementation of regulatory standards throughout FDA to ensure integrity and accountability of FDA functions and processes.

2. Provides advice and guidance to the Commissioner, Chief Scientist, and other key officials regarding premarket approval processes for all FDA-regulated products including requirements pertaining to applications, petitions, amendments and supplements; and product, processing, packaging and emerging product technologies.

3. Advises and assists senior FDA leadership in coordinating responses to allegations of patterns of deviations by FDA or its components from appropriate standards of conduct and performance. Also advises and assists senior FDA leadership in preventing such deviations.

4. Investigates and resolves informal complaints and disagreements, whether generated internally or externally, with respect to the administrative processing of various applications for products regulated by the agency as well as regarding the fair and even-handed application of agency policy and procedures in this process.

5. Processes all formal appeals, or requests for review, that are submitted to the Office of the Commissioner, whether generated internally or externally, including requests for hearings, appeals from administrative actions, and requests to review decisions at a lower level of the agency. Examples include, but are not limited to, requests for hearings in debarment and disqualification proceedings, requests to review decisions by the Centers, the Office of Regulatory Affairs, and elsewhere in the Office of the Commissioner under 21 CFR 10.75, appeals of formal or informal hearings, and agency-level scientific dispute resolution matters.

6. Advises and assists the Chief Scientist and senior leadership in evaluating and resolving all formal appeals, requests for review, and requests for hearings submitted to the Office of the Commissioner and coordinates responses to such appeals and requests.

7. Develops regulations and procedures to promote an efficient and effective process for addressing and resolving formal appeals, requests for review, and requests for hearings, as well as any other types of disputes suitable for formal resolution in the Office of the Commissioner.

8. Leads Advisory Committee Oversight and Management Staff, working in close collaboration with all FDA Centers to provide consistency in and continuously improve the operations of agency advisory committees.

9. Serves as the liaison between the Office of the Secretary, the Department Committee Management Office, all of FDA's Center advisory committee support staff, and other organizations/offices within FDA.

10. Ensures that all FDA committee management activities are consistent with the provisions of Federal Advisory Committee Act, departmental policies, and related regulations and statutes.

11. Coordinates with the Office of Appeals, within the Office of Scientific Integrity, to determine whether an informal complaint should be construed and treated as a request for formal review by the Office of the Commissioner under established regulations or procedures.

Office of Science and Innovation:

1. Provides strategic leadership, coordination, infrastructure and support for excellence and innovation in FDA science that will advance the agency's ability to protect and promote the health of the public. Key activities include:

Providing support for high quality, collaborative, peer-reviewed scientific activities throughout FDA that address important public health and regulatory issues concerning FDA regulated products, including their evaluation, quality, safety and effectiveness.

Fostering development and use of innovative technologies to meet public health needs, including through a planned Center for Innovation in Medicine and Public Health and through core scientific capacity to support FDA's regulatory functions and decision making.

Supporting excellence and the professional development of FDA scientists in all areas (i.e. population/statistical, review, laboratory and manufacturing sciences), including through the Commissioner's Fellowship Program, continuing education and professional activities (including clinical activities, cross agency working groups, and through relationships and staff exchanges with Universities and others.

Addressing scientific and public health priorities through support of high quality, peer reviewed scientific research, programs and related activities, both within and outside FDA and collaboratively, and through dissemination of new scientific information, methods and approaches.

Supporting scientific outreach, training, and collaboration in research and development activities that advance FDA's mission, including with sister agencies, global regulatory partners, academia (e.g., through planned Centers of Excellence in Regulatory Science), innovators, and consumers.

Seeking input from both FDA programs, stakeholders and outside advisors, including the FDA Science Board, to help define, review and meet FDA scientific needs and priorities to support our public health mission.

Office of International Programs:

1. Serves as the agency focal point for all international matters.

2. Serves as the primary agency liaison with other U.S. Government components, international and foreign governments (including Washington, DC embassies) for policy formulation and execution impacting FDA and FDA regulated products.

3. Provides leadership to agency program areas for international activities.

4. Serves as the focal point for the agency and the authority for policies and procedures pertaining to international travel.

5. Serves as the focal point and final clearing authority for all international technical cooperation and assistance activities.

6. Serves as the agency focal point and final clearing authority for all international programs and interactions with foreign counterpart regulatory agencies, international organizations, foreign embassies, all foreign officials, and with agency and all other United States Government components when international issues are involved.

7. Directs, manages, and leads agency strategic planning, priority-setting and resource allocation processes for agency international programs.

8. Serves as the agency focal point and final clearing authority for trade issues involving e.g., North American Free Trade Agreement (NAFTA), World Trade Organization (WTO), Free Trade Area of the Americas (FTAA), Asia Pacific Economic Cooperation (APEC), and United States Trade Representative (USTR).

9. Serves as the agency focal point and final clearing authority for formal arrangements with foreign governments e.g., memoranda of understanding (MOU), mutual recognition agreements (MRAs), exchange of letters, partnerships, equivalence issues, country assessments, and confidentiality commitments.

10. Serves as the agency focal point on policies and procedures for sharing public and non-public information and, in conjunction with the Office of Regulatory Affairs, import/export policy issues.

11. Manages the agency's foreign offices, including FDA staff deployed in foreign locations and all related budgeting, strategic planning, priority setting and resource allocation.

Office of Administration:

1. The Office of Administration (OA) will focus on enhancing agency wide administrative operations and overseeing a variety of agency-wide management programs, information management, financial and shared services operations, as well as the Office of the Commissioner's executive operations.

2. Provides executive direction, leadership, coordination, and guidance for the overall day-to-day administrative operations of the agency assuring the timely and effective implementation and high quality delivery of services across the agency and centers.

3. Advises and assists the Commissioner, Deputy Commissioners, Chief of Staff, and other key agency officials on various administrative management and business activities of the agency. Chairs the Prescription Drug User Fee Act (PDUFA) Review Board, which oversees financial management of the PDUFA program.

4. Assures that the conduct of agency administrative and financial management activities, including budget, finance, personnel, organization, methods, and similar support activities, effectively support program operations.

5. Utilizes a call center to address all administrative and information technology management issues, and monitors and analyzes operational performance and customer satisfaction.

6. Plans, directs and coordinates a comprehensive financial management program for FDA encompassing the areas of automated financial systems, fiscal accounting, voucher audit, and financial reporting. Issues periodic reports regarding the status of FDA's financial management and develops financial inputs for the agency's programs and financial plans.

7. Provides leadership and direction regarding all aspects of a variety of agency management programs including organization management, delegations of authority, freedom of information, Privacy Act, and regulatory dockets management as well as programs related to ethics and conflict of interest matters.

8. Advises the Commissioner and other key agency officials on administrative management and budget matters for components within the Office of the Commissioner. Provides advice and guidance with regard to formulation and development of administrative management policies, procedures, and controls.

9. Provides advice and assistance to the Commissioner and senior management officials on information management resources and programs. Establishes and oversees implementation of the FDA information management policy and governance, procedures and processes to ensure the agency is in conformance with the Clinger/Cohen Act. Establishes, directs and leads agency level programs and all strategic aspects of information management including: information technology (IT) shared services, telecommunications, security, strategic planning, capital planning and investment control, and enterprise architecture.

Office of Equal Employment Opportunity and Diversity Management:

1. Advises and assists the Commissioner and other key officials on

equal employment opportunity (EEO), Diversity, and Civil Rights activities which impact on policy development and execution of program goals.

2. Serves as the agency focal point and liaison to the Department, other Federal agencies, State and local governments, and other organizations regarding EEO, Diversity, and Civil Rights matters.

3. Develops and recommends policies and priorities designed to implement the intent of the Office of Personnel Management, Equal Employment Opportunity Commission, and Office of Civil Rights, Department of Health and Human Services requirements under Executive Orders, regulations, EEO and Civil Rights legislation.

4. Provides leadership, direction, and technical guidance to the agency on EEO, Diversity, and Civil Rights matters.

5. Examines the use and impact of administrative mechanisms on work assignments, pay systems, award systems, performance appraisal systems, promotion patterns, reorganization impacts, delegations of authority, management controls, information and documentation systems, and similar functions of management as they impact upon equal employment opportunities for all employees within the agency.

6. Issues policies, publications and information dissemination services to agency employees including Commissioner Policy Statements, brochures, the EEO Counselors Manual, etc.

Compliance Staff:

1. Develops plans, programs, and procedures designed to assure the prompt adjudication of complaints of alleged discrimination based on race, color, sex, age, religion, national origin, handicap, and sexual orientation.

2. Provides sign language interpreting services and manages the interpreting services contracts.

Conflict Prevention and Resolution Staff:

1. Provides confidential, informal assistance to employees and managers in resolving work-related concerns.

2. Develops and coordinates effective resolution processes and procedures.

3. Offers a variety of services and programs to address likely sources of conflict such as performance appraisals, harassment, mentoring relationships, and scientific collaboration.

4. Operates as a neutral, independent, and confidential resource providing informal assistance to FDA scientists, administrators, and support staff in addressing work-related issues. Assists in resolving conflicts and addressing concerns prior to and within established grievances processes.

5. Provides a neutral and impartial resource where employees can candidly discuss issues and explore options informally.

6. Provides alternative dispute resolution and mediation services as needed.

7. Develops and maintains training and technical assistance for agency EEO specialists, counselors, special emphasis/program representatives, employees, supervisory personnel, and other key officials.

Diversity Staff:

1. Develops and oversees agency diversity initiatives and the diversity databank.

2. Develops, implements, and monitors the agency's Affirmative Employment Plan and directs the agency's Affirmative Employment programs to achieve specific objectives.

3. Develops labor-management partnerships on EEO and Diversity matters. Provides sign language interpreting services and manages the interpreting services contracts.

Office of Acquisitions and Grants Services:

1. Serves as the agency focal point for developing, coordinating, and implementing FDA policies and procedures pertaining to acquisitions, interagency agreements, technology transfer and grants management; coordinates all administrative matters related to acquisitions, grants, cooperative agreements, interagency agreements, memoranda of understanding and technology transfer.

2. Provides acquisition management information and overall policy and technical support to all levels of the Office, agency, Department, and the Federal government in the areas of technology transfer, patents and acquisition and assistance matters.

3. Maintains liaison with the Department on contracts and grants/assistance management policy and procedural and operating matters; serves as the FDA focal point for the processing of audit reports and for liaison with the agency Office of Inspector General.

4. Provides the oversight function to all levels of the agency in the Small Business contracting program.

5. Provides technical and legal guidance in all areas of the agency printing management program.

6. Develops policy for printing to insure timely and cost effective implementation of the agency printing program.

Division of Acquisition Operations:

1. Responsible for mission specific contracts and simplified acquisitions, including research and development requirements and lab supply and equipment requirements.

2. Responsible for acquisition of service contracts and simplified acquisitions, including but not limited to, furniture, security, events management, temporary services, moving, library support, custodial, etc.

Division of Acquisition Support And Grants:

1. Develops acquisition policy. Provides customer relation support, responding to contract related FOIA requests, and ratifying unauthorized procurements.

2. Provides current policies and procedures to assist the FDA community to develop and transfer Federal technology to the commercial marketplace.

3. Negotiates, awards and monitors Federal funds awarded through various grant mechanisms.

4. Awards and administers Inter-agency Agreements (IAGs). Assigns Memorandum of Understanding (MOU) tracking number and maintains MOU files.

5. Provides managerial oversight of the agency's purchase card program. Serves as liaison with the bank, processing administrative functions, providing training and other assistance to ensure that participants understand their responsibilities under the program.

Division of Acquisition Programs:

1. Responsible for all information technology related contracts and simplified acquisitions related requirements.

2. Provides facility support, construction and renovation, architect/engineering services contracts and simplified acquisitions for all headquarter locations, Irvine, San Juan, and Dauphin Island.

3. Provides contracts to support the MQSA, Food, Tissue and Medicated Feed/BSE Programs. These contracts commission the States to conduct inspections to ensure the quality and safety of the nations' food, animal feed and medical devices.

4. Responsible for simplified acquisitions for ORA Headquarters and the Office of Criminal Investigations.

Division of Information Technology:

1. Responsible for all information technology related contracts and simplified acquisitions related requirements.

Office of Executive Operations:

1. Develops policy and provides guidance, advice and oversight to Office of the Commissioner (OC) staff with regard to programmatic FDA and OC administrative management policies, procedures, and controls.

2. Advises the Commissioner and other key agency officials on

administrative, financial and information management matters for components within the Office of the Commissioner (OC).

3. Manages the OC budget formulation and execution activities. Provides advice, guidance and direction on the administration of the OC budget.

4. Manages a variety of program administrative services including but not limited to travel, space, time and attendance, property, etc. for OC offices with appropriate officials. Establishes and maintains liaison with administrative staff throughout the OC to keep abreast of current policies and procedures.

5. Serves as OC liaison for acquisitions and grants activities ensuring compliance with agency and Federal contracting policies.

6. Coordinates and provides guidance and oversight concerning OC information management activities including those related to activities of FDA Bioinformatics Board.

7. Advises the Commissioner and Deputy Commissioners and other senior staff concerning all OC human capital programs and activities.

Office of Financial Operations:

1. Plans, directs, and coordinates a comprehensive financial management operations program for FDA encompassing the areas of budget analysis, execution, automated financial systems, fiscal accounting, voucher audit, financial services related to accounts payable, travel support and payroll liaison, and financial reporting. Provides staff assistance in justifying budgets through executive and congressional echelons. After appropriation, develops an orderly expenditure plan.

Office of Financial Management:

1. Plans, directs, and coordinates a comprehensive financial management program for FDA encompassing the areas of budget analysis, formulation and execution, automated financial systems, fiscal accounting, voucher audit, and financial reporting. Provides staff assistance in justifying budgets through executive and congressional echelons. After appropriation, develops an orderly expenditure plan.

2. Develops apportionment plans and issues allotments for expenditures.

3. Makes periodic reports regarding the status of FDA's financial management.

4. Develops financial inputs for the agency's programs and financial plans.

Division of Accounting:

1. Plan, evaluate and coordinate activities to ensure Food and Drug Administration (FDA) is in compliance with Federal government accounting policy and procedures.

2. Principal contact to ensure FDA compliance with Chief Financial Officers Act (CFO) audit activities.

3. Devise and implement new and creative mechanisms to streamline administrative procedures; for example, implementation or electronic certification for treasury schedules expansion of lock box techniques.

4. Operates the Prompt Pay System for FDA, which pays over 50,000 invoices annually, providing integrity checks throughout the system from receipt of the invoice to payment.

5. Maintains over 400 headquarters and field users of automated financial systems as they request assistance with problems and special requests using various systems and special reports.

6. Operates and maintains the FDA District Electronic Certification System, which processes payments for vendors and travelers for all FDA districts while complying with Treasury's directive on EFT payments.

7. Produces daily, biweekly, monthly and yearly budgetary reports for field and headquarters components.

8. Liaison with Shared Services Organization.

User Fee Staff:

1. Manages and oversees the receipt, deposit, and allocation of user fees paid by industry.

2. Prepares annual revenue reports for submission to Congress.

3. Reports on FDA's compliance with Congressional mandates.

4. Develops, manages user fee systems.

Division of Budget Execution and Control:

1. Provides guidance and advice on the management and development of the budgets for FDA's Office of the Commissioner and Headquarters. Conducts analysis about agency-level and cross-component accounts, trends, and projects. Interpret agency requirements and establish FDA policy/procedures on all phases of budget execution.

2. Apportions funds appropriated by Congress among components and oversees transfers of funds between components.

3. Completes detailed reviews and analyses of components' financial operating plans at the end of each quarter. Ensures budgetary resources are used in a manner consistent with the agency's mission and are not over spent or obligated beyond appropriate limits.

4. Manages key agency-level accounts and shared costs, such as FDA rent and central accounts.

5. Assists in the preparation of historical budget-related data, congressional inquiries, and data for budget formulation and hearings.

6. Reviews and clears all Inter-agency Agreements (IAG's) to assure that they comply with appropriation law and are included in FDA resource plans; monitor collection of reimbursable earnings and identify and solve related problems as necessary.

7. Maintains FDA staffing ceiling records, proposes ceiling adjustments as needed, monitors FTE usage, alerts management to potential overburn/underburn problems, and prepares recurring reports and special analyses as necessary on FTE levels.

8. Continuously surfaces, and provides recommendations and support to resolve PDUFA/MDUFMA issues (design status of funds and FTE reports; develop criteria to allocate collections). Maintains tracking system for allocating PDUFA/MDUFMA non-PDUFA, and AIDS funds, and prepare reports.

9. Conducts year-end closeout of appropriations with the Division of Accounting, FDA Centers and Offices. Prepares all necessary end-of-fiscal-year budget and staffing reports by organization and by program, and enter all past-year data.

Office of Financial Services:

1. Plans, directs, and coordinates day-to-day operations for financial services related to accounts payable, travel support and payroll liaison.

Division of Payment Services:

1. Performs billing and collecting services for headquarters accounts. Maintains internal control over processing of transactions to accounts, including application of batch controls to ensure accurate coding and making of necessary accounting transaction adjustments and corrections.

2. Maintains liaison with the Department of Central Payroll on headquarters payroll operations. Reconciles payroll data with accounts. Maintains tax withholding files. Issues withholding statements.

3. Processes employee time records; resolves payroll errors and assists employees with pay problems; issues new procedures as needed.

4. Participates in reengineering the payroll process to streamline correction of errors and reduce first time errors; and participates in timekeeper training.

5. Processes all purchase orders, receiving reports, and invoices for commercial payments made by the Food and Drug Administration (FDA) headquarters, assuring compliance with accounts and the Prompt Pay Act.

6. Coordinates with vendor and center personnel in researching payment information.

7. Responds to all vendor inquiries as well as inquiries from center personnel.

8. Prepares various reconciliations to ensure that schedules are properly accounted for and entered into the accounting system.

9. Reviews and distributes monthly accounting reports and processes corrections, as necessary.

10. Liaison with the Department of Treasury to initiate check traces.

Division of Travel Services:

1. Oversees processing of vouchers, including audit, matching with obligations, and scheduling for direct deposit using Travel Manager Software.

2. Oversees post audit of travel vouchers.

3. Provides travel advice/guidance throughout the agency, including significant research on Comptroller General Decisions; participates in training on travel procedures.

4. Oversees contractor processing of all headquarters and field Permanent Change of Station travel vouchers, including complex tax calculations.

5. Coordinates with the General Services Administration (GSA) contractual travel agent to ensure the Food and Drug Administration (FDA) travel and transportation requirement are met.

6. Field activities perform travel services directly for ORA and NCTR to include NCTR travel, ORA international travel, FATA responsibilities, data calls, travel audits, 348 travel and conference reporting.

Office of Information Management:

1. Develops the architecture, standards, policies, governance, best practices and technology road map that support the business priorities of the agency, including managing information technology infrastructure, telecommunications, security, strategic planning, capital planning and investment control, enterprise architecture, and applications development and; management. Provides advice and assistance to the Commissioner and senior management officials on information technology resources and programs.

2. Establishes and oversees implementation of the Food and Drug Administration (FDA) information technology policy and governance, procedures and processes to bring the agency in conformance with the Clinger/Cohen Act and the Paperwork Reduction Act. Provides leadership and direction regarding all aspects of the agency records management program.

3. Works in full partnership with FDA business areas, develops and communicates the overall vision for the agency's IT program.

4. Provides expert technical evaluation and recommendations for the new and emerging technologies to ensure the agency's IT program can proactively adjust to changing business needs and technology drivers.

5. Represents the agency IT program on internal and external meetings and workgroups on agency information technology programs and issues (e.g., Health and Human Services (HHS) Chief Information Officer (CIO) Council, FDA Leadership council, FDA level Review boards, etc.).

6. Establishes policies and procedures for system risk assessments and system business continuity and contingency planning.

Division of Business Partnership Support:

1. Advocates, communicates, provides, and manages liaison services and provides management and technical consultation resources regarding information technology to FDA offices, centers and other FDA stakeholders, including parties external to FDA (non-govt, e.g., PHRMA, BIO, DIA, ICH, etc) and PHS, Department, and other Federal government IRM and ADP operations.

2. Collaborates with BIB and the BRBs to prioritize new business requirements and establish projects which will require PM's and designs, develops and maintains the communication plan for all Enterprise agency projects the BIB, BRBs, and OIM.

3. Collaborates with other divisions within OIM to review request for each system; providing estimates for implementation and to assist in the establishment of priorities and schedules (overarching timeline of all projects/independencies), as well as ensure project/investment formulation, execution and actual information is reported.

4. Oversees and manages IT program and project management activities of major IT initiatives following project management best practices (Project Management, System Development, and Enterprise Program life cycles), in collaboration with the Division of CIO Support/Governance Branch, develops policies and procedures on all aspects of project planning, and interacts with and coordinates responses to the Department and OMB on all project management related activities.

5. Coordinates development of Center/Offices IT budget and provides support for budget execution and contract monitoring of information resources.

6. Oversees day-to-day operations of FDA web development, redesign, and web hosting environment.

7. Manages FDA Forms programs and is the lead for agency Section 508 implementation.

8. Receives user requests, orders, and issues desktop-related tools and equipment.

9. Manages and oversees help desk services and user support for infrastructure Center and/or FDA-wide applications (excludes field help desk which is part of the Division for Infrastructure Operations).

Division of Chief Information Officer Support:

1. Establishes and maintains an agency Enterprise Architecture (EA) governance structure that includes processes for systems, business, data, applications, technology, and security architectures.

2. Serves as a focal point within FDA and as a liaison between FDA and external public and private sector organizations regarding enterprise standards, IT architecture, investment management practices and related methodologies, data sharing and support services, and regarding all aspects of IT planning, development and management.

3. Develops, tracks and maintains the IT budget, operating plan, and acquisition plan. Manages and maintains an acquisition strategy policy and implements all aspects of contract administration and management for the Office of Information Management.

4. Plans, organizes and manages FDA's IT investment management process (CPIC) to ensure that IT resources are acquired and managed effectively, and to ensure effective ongoing control of IT investments. Additionally, architectural reviews of IT investments are conducted to ensure alignment with business functions, avoid duplication of effort, reduce costs, and improve the efficiency and effectiveness of IT initiatives and to ensure that the FDA IT enterprise employs appropriate standards.

5. Coordinates the agency IT risk management program, including identification, analysis, and mitigation and reporting of program and system level weaknesses. The division also maintains and audits compliance for system risk assessments and system business continuity and contingency planning.

6. Establishes administrative policies for OIM consistent with agency policies and manages all administrative activities including Administrative Support, Travel and Timekeeping.

7. Develops, maintains and manages the electronic records (e-records) policy within the Office of Information Management and coordinates as

necessary with other business entities within the FDA on records management activities.

8. Provides management of all aspects of human capital in the recruitment, hiring, deployment, development, management, training and evaluation of the OIM workforce to ensure that human capital programs are aligned with organizational goals and agency Human Resource requirements.

9. Develops and disseminates administrative internal communications and operational procedures for the OIM in coordination with the Communications Team. Keeps abreast of agency and office rules, regulations, procedures, policies and decisions

Division of Systems Management:

1. Designs, develops, implements, and maintains all agency software applications, IT systems, systems support and maintenance, and their integration with other Federal agencies, State and foreign governments and public and private entities.

2. Establishes and implements an Enterprise IT Common Component Framework containing modules/services to be shared across FDA information systems and maintains FDA enterprise applications through effective evaluation, streamlined application development, monitoring, testing, and control of agency-wide systems utilizing e-platform initiatives and interchangeable common components in order to support FDA business process needs and objectives efficiently and effectively.

3. Validates requirements for and directs the design, development and implementation of new system requirements, system enhancements and system maintenance changes for the agency, performs systems analyses to develop and implement testing strategies, procedures and methodologies, especially automated varieties, and develops and implements system specifications, requirements, procedures and guidelines.

4. Designs, develops, implements, and maintains standards-based electronic IT data systems and repositories that provide the FDA with an integrated and interoperable information environment to receive, track, analyze, and disseminate knowledge on FDA business/program activities and directs the development and implementation of FDA Data Administration policies standards and procedures to ensure design consistency, including review of work products for compliance with standards.

5. Assists in the development and implementation of technical specifications and plans for procurement of IT equipment (HW/SW) and support resources required for the integrating of new system designs.

6. Develops and implements a program risk management plan to oversee and mitigate critical risks and vulnerabilities in the execution of the systems under its responsibility.

7. Assists CIO Support Division in development and maintenance of FDA's policies and procedures for independent verification and validation of IT systems. Develops, implements and provides problem management processes for the FDA systems, including trend analysis of problems. Develops standard IT reports.

Division of Infrastructure Operations:

1. Manages agency wide LAN/WAN computer environment, including desktop, laptop, and Personal Digital Assistants (PDAs), as well as utilizing the computer environment for the development, testing, validation and integration of information technology applications throughout the agency.

2. Oversees and manages day-to-day operations of all FDA telecommunications activities including VoIP and customer support, mailbox management and problem resolution related to FDA Email services.

3. Oversees day-to-day operations and performance of all FDA hardware, including IT resources such as electrical power, HVAC, etc.

4. Provides technical consultation to the Systems Division in identifying appropriate IT hardware, software and infrastructure requirements for new IT applications that support FDA business process needs.

5. Assists CIO Support's Procurement Team in development and implementation of technical specifications and plans for procurement of IT equipment, software and support services.

6. Manages and coordinates the integration of systems and business applications, including testing of the applications, and coordinates the execution of services acquired by FDA to implement new system design efforts and their underlying infrastructure into operations and maintenance.

7.Collaborates with the Systems Management Division on the development and implementation of technical standards, policies and procedures to ensure efficient operations and controls of FDA IT systems and that infrastructure services are developed and operated.

8. Conducts studies and analyses and performs capacity planning to determine appropriate IT hardware, software and infrastructure requirements. Ensures agency infrastructure is kept up to date with FDA technology standards.

Division of Technology:

1. Reviews and evaluates the appropriateness of new and emerging information technologies, including those with potential science and laboratory benefits and enterprise architecture, for incorporation into existing systems and applications and for use in future agency supported initiatives.

2. Oversees the establishment and implementation of technology through an enterprise approach of common IT frameworks, connectivity and consistent practices, standards and policies to enable and support interoperability and consistency throughout the agency.

3. Establishes and manages, through an enterprise approach, the development of standards, including governance for reusable templates, services and common functions for application development.

4. Interacts with HHS, and other interagency groups to guide and align FDA to Government-wide initiatives regarding information technology.

5. Regularly attends industry and other technology meetings to stay abreast of emerging trends and technologies.

6. Directs and implements the FDA information security program to ensure that security controls for hardware, software and telecommunications solutions are: effective, facilitate the continuity of operations for FDA information systems, protect privacy, confidentiality and availability of FDA data; that they manage system security policies and standards for FDA information systems enterprise-wide in accordance with the agency, HHS, GSA, OMB and other Federal government security requirements.

7. Directs and responds to security audits and collaborates with assessment teams and other agency groups to develop and implement corrective action plans.

8. Establishes and communicates policies and procedures for system risk assessments and system business continuity and contingency planning.

9. Oversees disaster recovery planning for data center operations and coordinates with other divisions within OIM to plan, monitor, and test recovery plans for all applications throughout FDA.

10. Develops and monitors scientific workstation standards. Designs and implements new IT methods and applications for scientific computing for Bioinformatics Board activities.

Office of Management:

1. Advises and assists the Commissioner, Deputy Commissioner, Associate Commissioners and other key agency officials on various management and systems activities.

2. Assures that the conduct of agency administrative, personnel, organization, and similar support activities effectively support program operations.

3. Provides leadership and direction regarding all aspects of a variety of agency management programs, including ethics, dockets management, organization management, delegations of authority and special studies and projects for the Office of the Commissioner. Establishes agency-wide policy and provides overall direction and leadership for the Freedom of Information (FOI) program and Privacy Act program.

4. Integrates the agency's technical, programmatic and facilities requirements into the overall budgetary and development plan for the agency's consolidation. Implements relocation planning needed to successfully transition the agency into its new location.

5. Provides Food and Drug Administration's administrative services and facilities. Utilizes a call center to address all administrative and information technology management issues, and monitors and analyzes operational and customer satisfaction.

6. Provides leadership and direction regarding all aspects of agency-wide human resources management including employment, recruitment, training, career development, partnership activities, quality of work life issues, and executive services.

7. Provides program, technical and resources management for the FDA White Oak consolidation, logistics and facilities operations and maintenance services.

8. Provides leadership and guidance to the agency for all aspects of physical and personnel security including the suitability and National Security Information Program. Develops and implements agency wide security policy.

9. Manages and administers the suitability and security program as required by the Office of Personnel Management as set forth in ''Suitability'' (5 CFR, Part 731), and ''National Security Positions'' (5 CFR, Part 732). Monitors the appropriate security clearance levels for agency positions, employees, and contract employees.

10. Processes clearance requests, reviews investigative reports/findings and makes suitability determinations based on investigative findings.

11. Develops and directs the agency wide physical security programs and provides professional leadership and authoritative guidance.

12. Formulates policy and procedures necessary to maintain the integrity of privileged and trade secret information submitted by industry.

13. Develops and manages the agency's contractor security program when Automated Data Processing services or non-public information is released under contract agreement.

14. Serves as the single point of contact and focus for the Operating Division's management of more than 800 PHS commissioned officers assigned to approximately 150 duty stations in 47 states.

15. Provides coordination between FDA management and the Assistant Secretary for Health's Commissioned Corps programs. Serves the FDA Centers, special assignments and details to other organizations and initiatives.

16. Develops and implements all policies for utilization of all PHS Commissioned Officers in FDA. Coordinates all orders, billets, Commissioned Officer Effectiveness Reports, promotions, and awards for commissioned officers.

Ethics and Integrity Staff:

1. Develops agency policy and procedures implementing the ''Standards of Ethical Conduct for Employees of the Executive Branch'' (5 CFR, Part 2635) including the Department of Health and Human Services (DHHS) supplemental regulations (5 CFR, Part 5501).

2. Monitors employee compliance with Federal regulations by reviewing employees' financial disclosure reports and outside activity requests. Reviews, prepares, evaluates and secures appropriate approvals for waivers and other determinations regarding financial interest, conflict of interest and other ethical issues. Counsels employees and provides authoritative advice on the statutory, regulatory, policy and procedural requirements regarding ethics and conflict-of-Interest issues. Develops and conducts training for supervisors, managers, administrative staff, special government employees and other agency employees. Provides oversight and direction to the agency's Advisory Committee program as it relates to special government employees. Assures that conflicts of interest waivers are consistent, legally supportable, well-documented and timely. Evaluates cooperative agreements developed by agency components under the Federal Technology Transfer Act and provides technical advice on any related conflict of interest matters.

3. Provides advice to employees to ensure their compliance with applicable regulations and statutes on the following: (1) ''Standards of Ethical Conduct for Employees of the Executive Branch'' (5 CFR, Part 2635); (2) ''Supplemental Standards of Conduct for Employees of the Department of Health and Human Services'' (5 CFR, Part 5501); (3) ''Executive Branch Financial Disclosure, Qualified Trusts, Certificates of Divestiture'' (5 CFR, Part 2634); and (4) Criminal Conflict of Interest Statutes—Chapter 11—Bribery, Graft, and Conflicts of Interest (Chapter 11 of Title 18 U.S.C.)

4. Serves as liaison with other FDA components and the agency Office of General Counsel/Ethics Division to develop co-sponsorship agreements.

5. Provides executive and administrative support to the Conflict of Interest Review Board.

6. Coordinates Board activities, prepares background materials, analyzes recommendations and other correspondence for Board members and participates in Board decisions. Implements decisions including advising affected employees of Board determinations.

Office of Business Operations and Human Capital Programs:

1. The Office of Business Operations and Human Capital Programs is responsible for planning and directing agency management programs to include administering the FDA administrative policy programs. The following are specific functions within the Office:

Provides leadership and direction regarding all aspects of a variety of agency management programs, including strategic human capital, organization management, delegations of authority, competitive sourcing, executive resources management, performance management, rewards and recognition, workforce development and succession planning.

Provides executive leadership and direction to coordinate and operationalize the agency's business process improvement initiatives to increase quality, productivity, and transparency.

Oversees the development, prioritization and implementation of business process improvement recommendations to provide predictable, consistent and efficient application of decision-making standards, increase internal and external process transparency resulting in process clarity for internal and external stakeholders and improve the overall

operation and effectiveness of FDA resulting in productivity and efficiency gains.

Provides agency-wide leadership and guidance for all aspects of physical and personnel security including the Suitability and National Security Information program.

Develops and implements agency wide security policy.

Office of Management Programs:

1. Provides leadership and direction regarding all aspects of a variety of agency management programs, including strategic human capital, organization management, delegations of authority, competitive sourcing, executive resources management, performance management, rewards and recognition, workforce development and succession planning, and special studies and projects for the Office of the Commissioner. The following are specific functions within the Office:

Provides management analysis support and advisory services to the Office of the Commissioner and other agency components.

Serves as the agency focal point for FDA's organizational management and delegations of authority program, including monitoring of the establishment, abolishment, modification, transfer or consolidation of agency organizational components and their functional statements, and administering the Standard Administrative Code (SAC) system.

Provides direction and oversight for the agency's Competitive Sourcing Program, including the development of the FAIR Act Inventory, evaluating the efficiencies of the Most Efficient Organization, establishing policies, and advising senior leadership.

Manages the agency's human capital program, ensuring that human capital management programs are merit-based, effective, efficient and supportive of mission goals; alignment of human capital strategies with agency mission/goals; assessing workforce staffing needs; ensuring continuity of effective leadership to manage programs and achieve goals; and identification of mission-critical competency gaps and strategies to close the gaps and hire/retain necessary talent.

Provides leadership, direction, policy development, and oversees the performance management programs covering the Senior Executive Performance Management Program and the Performance Management Appraisal Program.

Provides leadership, direction, policy development and program management for agency workforce and succession planning activities.

Provides leadership, direction, policy development and program management for a variety of incentive programs, including recruitment, retention and relocation incentives, annual leave service credit, student loan program, Telework, etc.

Provides leadership, direction, policy development, program management, and training for special appointment authorities, including the Intergovernmental Personnel Act (IPA), Senior Executive Service (SES), Title 38, and Title 42, (including Service Fellowship, Senior Science Managers, and Senior Biomedical Research Service (SBRS)).

Provides leadership, direction, policy development and program management for compensation programs including the hiring and advancement within the Senior Executive Service (SES), SBRS, Title 38, Title 42, Service Fellowships, as well as waiver of overpayments, etc.

Assists the Office of the Chief Scientist in the management of peer review processes for scientific positions by: (1) Providing classification services for peer reviewed positions, and (2) providing staff support and advisory services for the SBRS.

Manages the agency reward and recognition programs, including the agency Honor Awards Program.

Provides leadership and direction to the agency for meeting the government's competitive sourcing program outlined by OMB Circular A–76, Performance of Commercial Activities.

Provides strategic management of human capital in the recruitment, deployment, development and evaluation of the FDA workforce to ensure human capital programs and policies are aligned with organizational goals.

Provides leadership and direction on agency workforce planning and succession planning activities.

Develops and coordinates the implementation of policies, procedures, and review activities for the agency's peer review program. Provides classification services for research scientists, medical officers, consumer safety officers, and related positions. Provides leadership and direction in the effective and efficient use of resources by conducting management and policy studies and providing management consulting services to the Office of the Commissioner. Employs a variety of data gathering and quantitative analytical techniques to determine the merit of current and proposed management policies and procedures and to assess the impact of new policies and legislation.

Provides management analysis services to the Office of the Commissioner to assess program and management concerns, which may include management studies, option papers, reports, and working group facilitation.

Provides organizational expertise and policy advice, consultation, and support to agency components and monitors the establishment, abolishment, modification, transfer, and/or consolidation of the agency organizational components and their functional statements; controls the assignment of standard administrative codes for implementation of approved organization proposals in the agency and serves as the agency liaison with the Department on SAC activities.

Plans, develops, modifies, and coordinates the delegations of authority program for the agency. Provides advice and consultation on matters related to delegations of authority.

Office of Security Operations:

1. Provides leadership and guidance to Food and Drug Administration (FDA) for all aspects of physical and personnel security including the suitability and National Security Information program.

2. Develops and implements agency wide security policy.

3. Manages and administers the Suitability and Security Program as required by the Office of Personnel Management as set forth in ''Suitability'' (5 CFR, Part 731), and ''National Security Positions'' (5 CFR, Part 732). Monitors the appropriate security clearance levels for agency positions, employees, and contract employees.

4. Processes clearance requests, reviews investigative reports/findings and makes suitability determinations based on investigative findings.

5. Serves as liaison with the Department's drug testing officials and coordinates the agency's drug testing program.

6. Carries out duties as outlined in the Department of Health and Human Services and the National Security Information Manual. Serves as liaison and coordinates with the Department regarding the classified document program.

7. Coordinates other agency checks for all non-citizen personnel who work in the agency's facilities.

8. Develops and directs the agency-wide physical security programs and provides professional leadership and authoritative guidance.

9. Provides physical, documentary, and preventative security consultation to FDA components.

10. Formulates policy and procedures necessary to maintain the integrity of

privileged and trade secret information submitted by industry.

11. Develops and manages the agency's contractor security program when Automated Data Processing services or non-public information is released under contract agreement.

Office of White Oak Services:

1. Provides program, technical and resources management for the Food and Drug Administration (FDA) White Oak consolidation, logistics and facilities operations and maintenance services.

2. Provides leadership and guidance to FDA Headquarters' staff offices and Headquarters operating activities for White Oak services.

3. Directs building operations functions for all FDA facilities at the White Oak Campus.

4. Provides direct interface with the General Services Administration (GSA) for White Oak services.

5. Serves as liaison with the Department of Health and Human Services (DHHS) and GSA for the efficient management and operation of facilities occupied by FDA programs at White Oak.

6. Directs and manages over a $70 million appropriation for the operation, construction, relocation, and maintenance for the White Oak Campus.

7. Provides leadership and direction to assure the efficient and effective utilization of FDA's resources dedicated to engineering design, facility improvements, and new construction of FDA facilities at White Oak.

8. Furnishes project management services including project planning, cost estimating and design, and oversight of construction until completion.

9. Ensures meaningful and continuous communication with community leaders and associations, other Federal officials, State and local governments, and business leaders and customers at White Oak.

10. Develops multiple strategies for addressing FDA's long and short-range facility plans at White Oak.

11. Develops agency plans, policy and procedures consistent with new regulatory requirements and agency needs for White Oak.

Division of Logistics Services and Facilities Operations:

1. Manages shared use conference and training facilities at the White Oak Campus.

2. Oversees transportation management programs and services, serves as the inter-governmental liaison on transportation issues, manages parking, ridesharing program, shuttle services, fleet management and motor pool management.

3. Oversees and directs a variety of commercial contracts to ensure smooth and efficient delivery of services.

4. Participates in the development of agency policy involving logistics programs and services.

5. Provides guidance and assistance to the agency operating activities on a variety of logistics management issues.

6. Manages the warehousing program for the White Oak facility to include material receiving and distribution, loading dock management, storage, collection and processing excess personal property, and labor services for movement of personal property.

7. Manages the Food and Drug Administration (FDA) mail room program for FDA headquarters and field organizations including mail room management, locator services, courier services, off-site mail screening and the nationwide meter contract.

8. Actively participates in and supports the continued development of the White Oak Campus.

Division of White Oak Consolidation:

1. Evaluates and implements strategies that enable the agency to maximize efficiency through the consolidation of specific and shared functions.

2. Coordinates budget and schedule in order to successfully implement project phases.

3. Establishes management structure and dialog with GSA, architectural and engineering design and construction contractors to ensure the FDA needs and concerns are fully addressed.

4. Monitors construction progress as individual projects proceed and coordinates necessary changes.

5. Provides technical direction interaction with design architects that ensure engineering, architectural and programmatic requirements are met in new facilities.

6. Coordinates the various activities required to successfully relocate the agency to its new location including the move, Information Technology (IT), security, safety and building operations.

7. Participates in the development of agency policy involving the consolidation program.

Office of Shared Services:

1. Provides FDA's administrative services including communications, facilities, library services, FDA historical activities, Freedom of Information (FOI) and Privacy Act programs, and dockets management. Utilizes a call center to address all administrative and information technology management issues, and monitors and analyzes operational and customer satisfaction.

Employee Resource and Information Center:

1. Provides information and services through a call center environment to all Food and Drug Administration (FDA) employees for administrative and information technology management issues. Maintains and populates key technology tools and monitors and analyzes operational and customer satisfaction.

2. Provides call center support to the general public via the FDA Employee Locator phone line.

3. Provides leadership policy development, and coordination for programs with a financial impact on FDA employees including transit subsidy and childcare subsidy programs, fleet management and motor pool management, Presidential Management Fellows Program, Emerging Leaders Program and new employee orientation.

Office of Public Information and Library Services:

1. The Office of Public Information and Library Services (OPILS) is responsible for planning and directing agency information programs to set the direction, coordinate, determine policy, and provide oversight for the provision of information services and information, in a variety of formats and for a variety of purposes, to FDA and the public. OPILS includes the following divisions and sections: Division of Dockets Management (DDM), Division of Freedom of Information (DFOI), FDA Biosciences Library (FBSL), and the FDA History Office. The following are specific functions within the Office:

Provides leadership and direction for the operations of all of the agency information centers, including the FDA Biosciences Library and the DFOI and DDM public reading rooms.

Provides executive perspective on current policy objectives and increases public understanding of the agency's purpose and function.

Establishes agency-wide policy and provides overall direction and leadership for the Freedom of information (FOI) and Privacy Act programs.

Provides information, information services and research support to FDA through access to information in various formats, via information consulting and advisory services.

Provides leadership and direction regarding all aspects of the agency's regulated dockets program.

Division of Dockets Management and Freedom of Information:

1. The Division of Dockets Management and Freedom of Information is responsible for planning and directing agency information programs to set the direction,

coordinate, determine policy, and provide oversight for the provision of services and information, in a variety of formats and for a variety of purposes, to FDA and the public for the services provided by the Dockets Management Branch (DMB) and the Freedom of Information Branch (FOIB).

The following are specific functions within the Office:

Provides leadership and direction for the operations of the agency information centers, including the FOIB and DMB public reading rooms.

Provides executive perspective on current policy objectives and increases public understanding of the agency's purpose and function.

Establishes agency-wide policy and provides overall direction and leadership for the Freedom of information (FOI) and Privacy Act programs.

Provides information and support to FDA through access to various documents via consulting and advisory services, and through proactive posting to the FDA internet.

Provides leadership and direction regarding all aspects of the agency's regulated dockets program.

Dockets Management Branch:

1. Receives, examines and processes submissions required or permitted in agency administrative proceedings; establishes and maintains docket files containing agency official records relating to an administrative proceeding. Disseminates submissions to appropriate offices for action. Routinely coordinates activities of the branch with other appropriate components.

2. Serves as the agency expert on requirements for submissions required or permitted in agency administrative proceedings. Participates in the development of regulations and policy impacting on agency administrative proceedings and the release of information under the Freedom of Information Act (FOIA).

3. Provides staff support for agency rulemaking activities. Determines compliance of petitions, comments, request for hearings, motions, briefs, and objections with agency regulations.

4. Establishes agency-wide policy and provides overall direction and leadership for the Freedom of information (FOI) and Privacy Act programs.

5. Maintains and operates a public reading room to make agency official records available to any interested party, and provides copies upon request, under the provisions of the FOIA.

6. Provides electronic access to these records, via the Internet, and other means, as required by the EFOIA.

7. Provides information access via the Intranet and other means to FDA personnel for Dockets Management Branch materials and to copyrighted documents.

8. Plans and conducts agency-wide analytical reviews and studies to assess and management information and address concerns. Makes recommendations and assists in the implementation of the recommendations.

Freedom of Information Branch:

1. Serves as the agency expert and focal point for headquarters and field personnel in the development and implementation of effective policies and procedures in accordance with the FOIA, the Privacy Act, FDA regulations, and other relevant statues.

2. Receives, reviews, controls, coordinates and routes all FOI requests to the proper action office; designs and implements control mechanisms to assure FOI and Privacy Act inquiries are processed and responded to within established timeframes.

3. Establishes agency-wide policy and provides overall direction and leadership for the Freedom of information (FOI) and Privacy Act programs.

4. Reviews all recommendations for denials submitted by headquarters and field FOI officers. 5. Determines the need for supplemental information and/or changes in the denial recommendation and coordinates required action with the submitting office.

6. Analyzes, compiles, and prepares reports on privacy and FOI activities in the agency for the annual reports to the Department and for other reporting requirements.

7. Maintains copies of agency manuals, indexes, and other records required to be on public display in the public reading room.

Division of FDA Biosciences Library:

1. The Division of the FDA Biosciences Library is responsible for planning and directing agency library programs to set the direction, coordinate, determine policy, and provide oversight for the provision of library services and information, in a variety of formats and for a variety of purposes to FDA and the public. The following are specific functions within the Office:

Provides research support to FDA through delivery of information consulting and advisory services, literature searches, and document delivery services in order for FDA to carry out its public health mission.

Collaborates with FDA researchers on research projects, bibliographies, internal publication databases, copyright issues, digitization and more, so FDA has the information it needs to meet its scientific and regulatory mission.

Plans, develops and conducts training sessions to teach customers how to access and best utilize the online resources available to them to enhance their research efforts.

Stewards of a unique, valuable, extensive and specialized collection of materials essential to FDA's scientific, legal, administrative and regulatory staff. Collects, organizes, maintains and preserves information resources, in multiple formats, in all areas of FDA's research and products FDA regulates, including: biologics, blood products, cosmetics, devices, drugs, food processing and safety, nutrition, pharmacy, pharmacology, radiology, tobacco, toxicology, and veterinary medicine.

Promotes and markets services and resources to customers. Leverages FDA's resources and increases awareness of the library services, staff expertise, and its valuable research collection. Provides services and resources to agency customers, other Federal employees and the public on a limited basis.

Selects, evaluates, acquires and/or develops, and provides electronic access to scientific and technical databases, publications and other media mechanisms in support of agency-wide research needs.

Partners with libraries and information centers, publishers, consortia across the Federal government, health related associations, and other organizations, to enhance resource sharing opportunities that provide for cost savings, resource sharing, sharing of skills and knowledge, benchmarking best practices, and collaboration on projects that have a beneficial impact on the library and FDA's work.

Public Services Branch:

1. Maintains library operations and staffs the public information desk, responding to requests for information from FDA and members of the public.

2. Provides information, information services and research support to FDA through access to information in various formats.

3. Provides training to FDA on the library's subscribed electronic research resources and tools.

4. Provides consulting and advisory services to FDA staff, through briefings and participation in scientific and regulatory meetings.

5. Provides research support through preparation of extensive literature

searches and delivery of customized information packages.

6. Provides articles and documents to researchers via document delivery and inter-library loan services.

7. Monitors and administers the document delivery system, *ILLiad*, and the customer relationship management system, *Ask a Librarian*.

8. Interprets library and information policy and copyright guidance for FDA customers.

9. Manages and coordinates access to bibliographic citation management systems, Reference Manager and EndNote, and consultants with researchers to assist with preparation of bibliographies and citations.

10. Delivers presentations and briefings at New Employee Orientations, Awareness Days, Open Houses, and FDA center events to promote the library resources and services.

Technical Services Branch:

1. Ensures the library collections, both online and in print formats, are responsive to customer research and information needs.

2. Manages portfolio of the library's research resources.

3. Develops and implements the library's collection development policy and interprets policy to customers to justify purchase decisions, collection scope and other criteria.

4. Collects usage data, customer recommendations and feedback to determine information resources to maintain and to cancel; administers acquisition of print and online resources.

5. Establishes site licenses beneficial to FDA research for all library subscribed electronic resources.

6. Establishes pilot tests to evaluate new electronic information resources; analyzes feedback and makes determinations for purchase decisions.

7. Administers the integrated library system and its modules, including the online public access catalog, the federated search engine, and the electronic resource management system.

8. Provides news pushes including the **Federal Register**, and manages listservs to provide daily email updates to online newsletters of interest.

FDA History Office:

1. Provides expertise on the history of FDA and its predecessors; is a key resource for historical records and resources used for agency commemoratives, anniversaries and milestones.

2. Responds to information requests from FDA centers, scholars, the press, consumers, government agencies, industry, trade organizations, health professionals, associations, and foreign sources. Presents information in workshops, briefings, and seminars.

3. Conducts research and produces publications, briefing reports, and presentations interpretive of FDA. Maintains an extensive office research file.

4. Provides expertise and assesses the historical value of agency resources, i.e., records, photographs, films, audio-visual records, and rare or out-of-print monographs. Leverages FDA resources through consultative partnerships with FDA offices. Collaborates on preservation of historical materials with experts at the National Archives and Records Administration, the National Library of Medicine, the Smithsonian Institution, and other government, academic, and private institutions.

5. Collects, processes, and preserves artifacts that capture the history of FDA's work, represent the commodities it regulates, and document the breadth of its responsibilities. Mounts a variety of exhibits in collaboration with other public and private institutions to educate agency employees and the public about the history and work of the FDA.

6. Partners with the National Library of Medicine, History of Medicine Division, to create and make available transcripts and recordings of an oral history program that documents FDA's institutional history, through personal interviews with key exiting FDA employees.

Office of Real Property Services:

1. Provides leadership and guidance to agency components for all aspects of real property management functions.

2. Directs the management of programs and systems leading to the acquisition, alteration, maintenance, and utilization of leased and owned facilities nationwide, except for the acquisition of buildings for the White Oak Headquarters Consolidation.

3. Directs building operations functions for all Food and Drug Administration (FDA) facilities nationwide.

4. Manages the program and provides direct interface with General Services Administration (GSA) for lease acquisition and lease management for all agency facilities nationwide.

5. Serves as liaison with the Department of Health and Human Services (DHHS) and GSA for general facilities management issues and specifically for the efficient management and operation of facilities occupied by FDA programs nationwide.

6. Directs and manages an excess of $221 million dollar appropriation for the acquisition, operation, construction, maintenance for the agency's nationwide real property portfolio.

7. Provides leadership and direction to assure the efficient and effective utilization of FDA's resources dedicated to engineering design, facility improvements, and new construction of FDA facilities nationwide.

8. Establishes management structure and dialog with GSA and the architectural engineering design and construction contractors to ensure FDA program needs and concerns are fully addressed.

9. Ensures meaningful and continuous communication with community leaders and associations, State and local governments, and business leaders in areas where FDA proposes new facilities.

10. Develops and implements program plans, policies and procedures designed to create and maintain a safe and healthful environment for FDA employees, visitors, and guest workers, and to protect the environment.

11. Develops agency plans, policy and procedures consistent with new environmental health and safety regulatory requirements and agency needs. Provides fire protection, safety engineering, and environmental health consultation to the agency's program managers and engineering offices.

12. Leads the agency's decommissioning efforts to close FDA laboratories and offices from an environmental, safety and health perspective.

13. Consults with program officials on safety matters pertaining to changing and emerging research programs.

14. Recommends special technical studies to increase the knowledge of the relationship between occupational safety and environmental health and laboratory programs of FDA.

15. Provides support to the FDA Safety Advisory Board and conducts the FDA Safety and Health Council meetings.

16. Develops and implements a safety management quality assurance program for the agency's multiple work sites nationwide. Develops and implements a similar headquarters program consistent with the FDA Safety Advisory Board recommendations and approval.

Jefferson Laboratories Complex Staff:

1. Provides leadership and direction regarding all aspects of facilities management.

2. Manages and coordinates all aspects of the Jefferson Laboratories long range facilities planning.

3. Develops renovation and improvement project definitions and priorities for inclusion in the agency's Annual Facilities Plan and budget.

4. Provides leadership and direction to assure the efficient and effective utilization of Jefferson Laboratories resources dedicated to engineering design, facility improvements, maintenance and new construction projects.

Division of Engineering Services:

1. Manages and directs design and construction requirements for facility acquisitions within the agency. These requirements may encompass the following activities singularly or in combination; preparation of proposals, preparation of functional requirements, program of requirements and criteria, architect and engineering liaison, space design and planning, functional and technical reviews, preliminary site selections, and project management for facilities construction, renovation and improvement projects.

2. Provides engineering guidance and support for all activities related to maintenance, alterations, and repairs for agency facilities nationwide.

3. Directs and coordinates all agency facilities programs concerned with equipment specifications and installation associated with facility acquisitions. Assists the programs' staffs in developing compatible facilities and equipment systems for the agency.

4. Provides overall engineering services including: feasibility studies, design criteria, concept, analysis, and estimates. Schedules and tracks building and facilities projects and manages project design.

5. Manages the FDA energy management program; develops agency policy relating to the program; develops and enforces supporting agency standards that comply with stated goals of the Department.

6. Oversight of structural, architectural or mechanical modifications to accommodate specific requirements in the existing FDA portfolio.

7. Prepares computer—aided design (CAD) drawings for the agency and maintains file of master drawings for FDA portfolio.

8. Administers agency contract for renovations/alterations of office space.

9. Provides space and alterations project management for existing FDA space to program components.

10. Develops, implements and manages integration of facilities technologies.

Environment, Safety and Strategic Initiatives Staff:

1. Manages the agency's Environment, Safety and Health (EH&S) Program;

2. Oversees strategic management initiatives and programs initiated at Government-wide, Departmental, agency and Office levels.

3. Oversees and directs a variety of commercial contracts or interagency agreements to ensure smooth and efficient delivery of services.

4. Participates in the development of agency policy involving EH&S programs and services.

5. Provides guidance and assistance to the agency operating activities on a variety of EH&S and Strategic management issues.

6. Actively participates in and supports the agency Facility Management System used to manage FDA's Real Property Asset inventory.

7. Receives and implements new initiatives for Real Property Services (e.g. President Management Agenda initiatives; Office of Management and Budget Scorecards; Department Objectives and agency initiatives)

Division of Facilities Operations:

1. Coordinates building operations and facilities management functions for all Food and Drug Administration (FDA) owned facilities within the Washington metropolitan area which includes: Module 1 (MOD 1), and the Beltsville Research Facility (BRF). Through special delegations of authority from the General Services Administration (GSA), maintains responsibility for the total management, operation, and maintenance of Federal Building 8 (FB–8) and Module 2 (MOD 2).

2. Oversees and directs a variety of commercial contracts to ensure smooth and efficient delivery of services.

3. Participates in the development of agency policy involving building management and operations.

4. Provides guidance and assistance to the agency operating activities on a variety of facilities operations issues.

5. Coordinates office and laboratory relocations and provides technical assistance to programs regarding effective space utilization.

6. Provides guidance to program personnel in identifying or developing alternatives or emergency procedures during scheduled and unscheduled maintenance interruptions.

7. Administers agency contracts for moving services and preventive maintenance for government owned property.

8. Manages and coordinates the General Services Administration Delegations of Authority program for FDA nationwide. Responds, reviews, and analyzes existing and proposed Delegation Agreements, Interagency Agreements, Memorandum of Understandings regarding the agency's nationwide property holdings for operational planning processes and improvement.

Portfolio Development Staff:

1. Plans and develops the agency Annual Facilities Plan that includes forecasts for long term, short term and immediate space needs as well as annual facilities budgets for rent, operations and maintenance and building and facilities.

2. Develops multiple strategies for addressing FDA's long and short range facility plans.

3. Develops agency standards and enforcement of occupied and vacant space utilization. 4. 4. 4. Prepares reports and space management analysis of the agency's real property holdings. 5. 5. Analyzes agency housing plans and performs real property occupied and vacant space 5. customer analysis.

6. Provides cost analysis support to agency components concerned with leasing, construction, and finance costs.

7. Manages the policy, acquisition, management and administration of the agency's leased real property portfolio.

8. Provides guidance and assistance to the agency operating activities on a variety of nationwide real estate management issues.

9. Serves as liaison with the Department of Health and Human Services (DHHS) and the General Services Administration (GSA) for all lease acquisition and lease management of FDA nationwide facilities.

10. Conducts agency facility studies and develops specific long-range facility plans for both headquarters and field operations.

11. Directs or participates in, the preparation of the Program of Requirements for new construction projects.

Center for Tobacco Products:

1. The Center for Tobacco Products will be established to address the enactment of the Family Smoking and Tobacco Control Act. This Office will consist of an Office of Management, an Office of Policy, an Office of Regulations and an Office of Science.

Office of the Center Director:

1. Provides leadership and direction for all Center activities and coordinates programs within the agency, Department and government agencies.

2. Plans, administers, coordinates, evaluates and implements overall Center scientific, regulatory, compliance, enforcement and management programs, policies and plans.

3. Provides leadership and direction for Center management, planning, and evaluation systems to ensure optimum utilization of personnel, financial resources, and facilities.

4. Establishes and manages a program to maintain the highest level of quality and integrity for all Center laboratory studies and the processing of regulatory samples, and ensures that all laboratories are in compliance with Good Laboratory Practice Regulations.

5. Coordinates and monitors the Center's overall research portfolio, including all research-related activities and inquiries and the development of strategic research program plans.

6. Serves as the primary representational role for relationships with the department, OMB, the White House, the Congress and the media.

Office of Management:

1. Provides support to the Center Director and Deputy Directors, including the coordination and preparation of briefing materials and background information for meetings, responses to outside inquires, and maintenance and control of the Center Director's working files.

2. Manages the Center's Freedom of Information Act activities, coordinating responses with other Center technical, regulatory, and policy units as well as developing direct responses.

3. Provides correspondence control for the Center and controls and processes all agency public correspondence directed to the Center Director. Develops and operates tracking systems designed to identify and resolve early warnings and bottleneck problems with executive correspondence.

4. Coordinates the Center's communications with the agency, Department, and the other Federal government agencies.

5. Provides authoritative advice and guidance to the Center Director on management policies, guidelines, issues and concerns that directly impact Center programs and initiatives.

6. Provides leadership, guidance and directs the development of long-range strategic and operational plans and systems for Center activities and directs technical support staff in providing essential management services and other critical support functions.

7. Provides leadership and guidance as primary interface working with the FDA Office of Shared Services to ensure provision of a broad range of essential technical support services.

8. Provides leadership and effective coordination as the primary Center liaison and expert with the Office of Information Management for provision and continuous improvement of information and technology services for the Center to include networking, scientific computing software engineering, systems, and telecommunications.

9. Administers and executes Center program planning and performance activities, budget formulation and execution, payroll, accounting, fleet and property management functions.

10. Analyzes, formulates and develops annual budget for the Center in accordance with FDA, DHHS, OMB and Congressional guidelines. Provides oversight and ensures compliance with all regulations governing financial processes as outlined in OMB, GAO, DHHS and FDA policies.

11. Manages and maintains a management system for center wide research and support functions.

12. Develops, maintains, monitors, analyzes and reports data to Center management and program officials on the Center's budget/planning resource monitoring and evaluations systems.

13. Manages, conducts, and analyzes studies designed to improve Center processes and resource utilization and support requirements.

14. Provides leadership, guidance, technical support and assistance to Center managers, employees and shared services staff on services including timekeeping, payroll, fleet management, personal property management, travel, acquisitions and financial services.

15. Provides leadership within the Center to assure compliance with statutes, executive orders and administrative directives, such as the Chief Financial Officer Act (CFO) and the Federal Financial Manager's Financial Integrity Act (FMFIA).

Office of Policy:

1. Advises the Center Director and other key agency officials on matters relating to agency policy, regulations and guidance, legislative issues, and planning and evaluation activities.

2. Participates with the Center Director in the formulation of the basic policies and operational philosophy, which guide the agency in effectively implementing its responsibilities.

3. Oversees and directs the Centers planning and evaluation activities, including the development of programs and planning strategies through analysis and evaluation of issues affecting policies and program performance.

4. Advises and assists the Center Director and other key agency officials concerning legislative needs, pending legislation and oversight activities that affect FDA.

5. Serves as the focal point for overall legislative liaison activities within Center, FDA and between FDA, the Department, PHS and other agencies related to Tobacco; analyzes the legislative needs of the Center and drafts or develops legislative proposals, position papers, and departmental reports on proposed legislation for approval by the Center Director and Commissioner.

6. Advises and assists members of Congress and congressional committees and staffs in consultation with the Office of the Secretary, on agency actions, policies, and issues related to legislation which may affect the Center.

Office of Regulations:

1. Provides Center oversight and leadership in the development of regulations, policies, procedures and guidance for the review and regulation of tobacco products, their labels, and marketing, and in the development of new legislation.

2. Provides Center oversight and leadership in the administration of the user fee billing and waiver program, and registration and listing.

3. Coordinates, interprets, and evaluates the Center's overall compliance efforts. As necessary, establishes compliance policy or recommends policy to the Center Director.

4. Oversees and directs the agency's rulemaking activities and regulation and guidance development system.

5. Serves as the agency focal point for developing and maintaining communications, policies, and programs with regard to regulations development.

6. Stimulates awareness within the agency of the need for prompt and positive action to assure compliance by regulated industries; works to assure an effective and uniform balance between voluntary and regulatory compliance and agency responsiveness to consumer needs.

7. Evaluates and coordinates all proposed legal actions to ascertain compliance with regulatory policy and enforcement objectives.

8. Develops and/or recommends to the Center Director policy, programs, and plans for activities between the agency and State and local agencies; administers the Center's overall Federal-State program and policy; coordinates the program aspects of agency contracts with State and local counterpart agencies.

Office of Science:

1. Serves as principal authority and provides leadership for the Center's participation in the National Toxicology Program (NTP).

2. Organizes, plans, and directs Center research programs in accordance with Center-wide strategic direction. Implements Center-wide strategies for achieving annual and long-range plans for research.

3. Provides leadership and direction for communications among scientific and administrative staffs.

4. Organizes, plans, and directs the Center for research support in the areas of Tobacco.

Directs the development methods used to extrapolate test results from animals to humans.

5. Coordinates research in Center program areas with leading scientists in other segments of FDA and the scientific community at large and promotes and coordinates the Center's technology transfer under the provisions of the Federal Technology Transfer Act.

6. Coordinates with other Center and agency components and top level officials of other agencies to provide input for long-term research planning in responsible program areas.

7. Insures that programs implemented are responsive to the Center's portion of the agency's integrated research plan.

8. Provides scientific oversight of Center research contracts and agreements.

9. Advises and assists the Center Director, Deputy Director, and other key officials on scientific issues that have an impact on policy, direction, and long-range goals.

10. Coordinates and provides guidance on special and overall science policy in program areas that cross major agency component lines and scientific aspects that are critical or controversial, including agency risk assessment policies.

11. Represents the Center with other government agencies, state and local governments, industry, academia, consumer organizations, Congress, national and international organizations, and the scientific community on tobacco science policy and tobacco science issues.

12. Serves as the focal point for overall management of Center activities related to science priorities, resources, and leveraging efforts, as well as peer review of scientists and scientific programs.

13. Advises the Commissioner, Deputy Commissioner, and other key officials on scientific facilities and participates with other agency components in planning such facilities.

14. Administers the Tobacco Advisory Committee that advises the Center Director, Deputy Director, and other key officials regarding the quality and direction of tobacco science and scientific issues.

II. **Delegation of Authority**. Pending further delegation, directives or orders by the Commissioner of the Food and Drugs, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

Dated: August 7, 2009.

Kathleen Sebelius,

Secretary of Health and Human Services.

[FR Doc. E9–19680 Filed 8–17–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Development of Antiviral Products for Treatment of Smallpox and Related Poxvirus Infections; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop regarding scientific issues in clinical development of antiviral drug products for treatment of smallpox and related poxvirus infections. This public workshop is intended to provide information for and gain perspective from health care providers, academia, and industry on various aspects of antiviral product development for smallpox and related poxvirus infections, including the status of clinical understanding of smallpox from pre-eradication experience, current epidemiology of naturally occurring poxvirus infections, potential effect of antiviral treatment for smallpox and related poxvirus infections, and issues pertaining to animal models for smallpox and related poxvirus infections. The input from this public workshop will help in developing topics for further discussion.

Dates and Times: The public workshop will be held on September 1, 2009, from 8:30 a.m. to 5:30 p.m. and on September 2, 2009, from 8 a.m. to 4 p.m.

Location: The public workshop will be held at the Crowne Plaza Silver Spring, 8777 Georgia Ave., Silver Spring, MD 20910.

Contact Person: Chris Moser or Lori Benner, Center for Drug Evaluation and Research, Food and Drug Administration, Office of Antimicrobial Products, New Hampshire Ave., Bldg. 22, rm. 6209, Silver Spring, MD 20993–0002, 301–796–1300.

Registration: To register electronically, e-mail registration information (including name, title, firm name, address, telephone, and fax number) to *SmallpoxWkshp@fda.hhs.gov* by August 24, 2009. Persons without access to the Internet can call 301–796–1300 to register. Registration is free for the public workshop, but interested parties are encouraged to register early because spaced is limited. Seating will be available on a first-come, first-served basis. Persons needing a sign language interpreter or other special accommodations should notify Christine Moser or Lori Benner (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop regarding antiviral drug development for smallpox and related poxvirus infections. This public workshop will focus on scientific considerations in the clinical development of products for treatment of smallpox and related poxvirus infections. This public workshop is intended to provide information regarding historical perspectives on smallpox and current perspectives on related poxvirus infections in humans. The workshop will explore approaches to assessing the potential effect of antiviral treatment for smallpox and related poxvirus infections. Issues pertaining to animal models for smallpox and related poxvirus infection and their relationship to disease in humans will be discussed at the workshop. In addition, the workshop will include perspectives of public health organizations on possible uses of an antiviral product for poxvirus infections.

The agency encourages individuals, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 20 working days after the public workshop, at a cost of 10 cents per page. Transcripts will also be available on the Internet at *http://www.fda.gov/Drugs/NewsEvents/ucm169065.htm* approximately 45 days after the workshop.

Dated: August 11, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–19781 Filed 8–17–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1829–DR; Docket ID FEMA–2008–0018]

North Dakota; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Dakota (FEMA–1829–DR), dated March 24, 2009, and related determinations.

DATES: *Effective Date:* August 10, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 10, 2009.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–19695 Filed 8–17–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1853–DR; Docket ID FEMA–2008–0018]

Nebraska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–1853–DR), dated July 31, 2009, and related determinations.

DATES: *Effective Date:* August 10, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 31, 2009.

Chase, Deuel, Lincoln, and Perkins Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–19696 Filed 8–17–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5291–N–03]

Privacy Act; Notification of Intent to Establish a New Privacy Act System of Records; Disaster Information System (DIS)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of a New Privacy Act System of Records.

SUMMARY: HUD proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system of records is Disaster Information System (DIS). DIS will contain information on families who apply for and are determined by FEMA to be eligible to receive disaster housing assistance after a presidentially declared disaster. This record system will support the Disaster Housing Assistance Program (DHAP), which is a temporary rental housing assistance program established by an Interagency Agreement (IAA) between HUD and the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA). DHAP will provide rent subsidies for HUD assisted individuals and families displaced by a presidentially declared disaster.

DATES: *Effective Date:* This action shall be effective without further notice on September 17, 2009 unless comments are received that would result in a contrary determination.

Comments Due Date: September 17, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, Room 10276, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act Inquiries: Office of the Chief Information Officer, contact Donna Robinson-Staton, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, Telephone Number (202) 402–8073. For program information: Jerry Armstrong, IT Division Director for Public and Indian Housing Information Management, Potomac Center, 550 Twelfth Street, SW., First Floor, Washington, DC 20410, Telephone Number, (202) 475–8742 or Dudley Ives, DIS Information Technology Manager, Potomac Center, 550 Twelfth Street, First Floor, SW., Washington, DC 20410, Telephone Number, (202) 475–8603. (These are not toll-free numbers.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, this notice is HUD's notification of its intent to establish a new system of records for its DIS. Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the system of

records, and require published notice of the existence and character of the system of records. The system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' July 25, 1994; 59 FR 37914.

Authority: 5 U.S.C. 552a, 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: August 11, 2009.

Jerry E. Williams,

Chief Information Officer.

HUD/PIH–07

SYSTEM NAME:

Disaster Information System (DIS).

SYSTEM LOCATION:

DIS system servers are located in Charleston, WV; and access is enabled via a web application interface. The servers are maintained by HUD Information Technology Services (HITS) contractor, and HUD's information technology partners: Electronic Data Services (EDS) and Lockheed Martin.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families determined to be eligible for the disaster housing assistance program, which is administered by the Department of Housing and Urban Development and Public Housing Authorities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of family composition details, income, and rent data obtained from FEMA and PHAs. More specifically, the system of records contains information such as names and social security numbers for individuals and family members; alien registration information; address and tenant unit numbers; financial data such as income, adjustments to income, tenant family composition characteristics such as family size, sex of family members, information about the family that would qualify them for certain adjustments or for admission to a project limited to a special population (e.g., elderly, handicapped, or disabled); relationships of members of the household to the head of household (e.g., spouse, child); preferences applicable to the family at admission; income status at admission; race and ethnicity of household members; unit characteristics such as number of bedrooms; geographic data obtained by the PHA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Housing and Community Development Act of 1987 (42 U.S.C. 3543) and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133).

PURPOSE:

An applicant completes, or a FEMA representative assists in filling out, an application that determines an applicant's eligibility for disaster housing assistance. FEMA then completes the disaster housing application and validation process for determining a family's eligibility to receive disaster housing assistance. Under the Disaster Housing Assistance Program (DHAP), when an individual or family is determined by FEMA to be eligible, the required family and household data is then submitted to the HUD DIS. Once received, HUD will initiate the process for the Public Housing Agencies (PHA), the entities that administer DHAP to provide the housing assistance to the FEMA-determined eligible families. The following information is required by the disaster housing assistance program: (1) Names of all persons who will be living in the unit, social security numbers, their sex, date of birth, citizenship, and relationship to the family head; (2) FEMA disaster and registration number (3) Pre-disaster and current address and telephone numbers; (4) Family housing characteristics (e.g., number of bedrooms) or disability accommodation requirements; (5) Names, addresses, and taxpayer identification number for current landlords; and (6) rental payments and utility costs. DIS also allows PHAs to electronically submit information to HUD that is related to the administration of DHAP, including continued verification of eligibility and lease effective and end dates. It collects data for DHAP operations and provides capabilities for accurately tracking, monitoring, and reporting program activities and processes.

Additionally, as part of HUD's oversight responsibility, the collected data maintained in DIS is used to calculate the amount of subsidy authorized and disbursed to PHAs and to monitor the PHAs' overall performance and use of DHAP funds.

DIS is a flexible, scalable, web-enabled application that aids HUD and PHA staff to administer the disaster housing assistance program by: (a) Increasing the efficiency of delivering housing assistance benefits to disaster victims; (b) Detecting and resolving program eligibility problems; (c) Evaluating program effectiveness; (d) Improving program reporting; and (e) Eliminating the payment of duplicate disaster benefits. Records in DIS are subject to use in authorized and approved computer matching programs regulated under the Privacy Act of 1974, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to the uses cited in the section of this document titled ''Purposes'', other routine uses may include:

1. To PHAs to verify the accuracy and completeness of tenant data used in verifying continued eligibility and the amount of disaster housing assistance. Any information shared back to the PHAs will pertain only to that PHA's operations and no other PHA's operations;

2. To PHAs to identify and resolve discrepancies in tenant data;

3. To the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) to identify duplicate rental housing assistance applicants and provide DHAP eligible family data updates and reports;

4. To the U.S. Department of Health and Human Services and U.S. Social Security Administration for computer matching to verify the accuracy and completeness of the data provided, to verify continued eligibility in DHAP, and to aid in the identification of family data error, fraud, and abuse in DHAP through HUD's income computer matching program;

5. To the Immigration and Naturalization Service for alien status verification;

6. To HUD or individuals under contract, grant or cooperative agreement to HUD to monitor PHA efforts and compliance requirements, facilitate technical assistance and for research and evaluation of national program outcomes; and

7. To individuals under contract to HUD or under contract to another agency with funds provided by HUD—for the preparation of studies and statistical reports directly related to the management of DHAP.

8. To the Office of Policy, Development and Research and future researchers selected by HUD to carry out the objectives of HUD's DHAP in aggregate form without individual identifiers—name, address, social security number— for the performance of research and statistical activities of the DHAP; and

9. Additional Disclosure for Purposes of Facilitating Responses and Remediation Efforts in the Event of a Data Breach. A record from a system of

records maintained by this Department may be disclosed to appropriate agencies, entities, and persons when:

a. the Department suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

b. the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and,

c. the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in family case files in the PHAs and electronically in office automation equipment. Records are stored on HUD computer servers for access by headquarters and field offices, and by the public housing agencies via a web application interface. All of the DIS data is stored on HUD's servers. The disk and backup files are maintained by HUD's information technology partners—Electronic Data Services (EDS) and Lockheed Martin. The original (hard copy) files are stored in the originating PHA.

Irretrievability: Records are retrieved by an individual's SSN.

Safeguards: These are the measures used to protect the records from unauthorized access or disclosure:

1. The REAC–IT Web Access Secure SubSystem (WASS) provides audit logging for all system access via WASS's authentication of all users.

2. WASS provides authentication methods that meet National Institutes of Standards and Technology (NIST) requirements. Every user has a WASS ID and is authenticated via WASS.

3. The Inventory Management System (IMS) maintains a record of each DIS user's logons, logoffs, and logoff exceptions if any.

4. For each user, IMS system logs the number requests for web pages containing privacy data. The number of page view requests is tracked per page per session. The first and last timestamp of access for every privacy page is also recorded per session.

5. IMS system archives the user privileges data when a user is removed from the system or when the unmasked privacy data viewing privileges are modified.

6. Hard copy records are stored in lock file cabinets in rooms to which access is limited to those personnel who service the records.

7. Background screening, limited authorization and access with access limited to authorize personnel.

8. Prior to user modification and storing, DHAP makes an archive copy of the record. As it is a safeguard for retaining the original record.

RETENTION AND DISPOSAL:

Electronic records are maintained and destroyed according to the HUD Records Disposition Schedule 2225.6. Records are maintained for a period of three years.

SYSTEM MANAGERS(S) AND ADDRESSES:

Jerry Armstrong, IT Division Director for Public and Indian Housing Information Management, Potomac Center, 550 Twelfth Street, SW., First Floor, Washington, DC 20410, Telephone Number, (202) 475–8742 or Dudley Ives, DIS Information Technology Manager, Potomac Center, 550 Twelfth Street, First Floor, SW., Washington, DC 20410, Telephone Number, (202) 475–8603.

NOTIFICATION PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20715. Written requests for access can establish proof of identity by a notarized statement or equivalent.

CONTESTING RECORD PROCEDURES:

Procedures for the amendment or correction of records and for applicants wanting to appeal initial agency determination appear in 24 CFR part 16. The disaster related information reported in DIS originates from the FEMA. If a participant of HUD's Disaster Housing Assistance Program disputes this information, he or she should contact FEMA directly or in writing to dispute erroneous information by fax ((800) 827–8112) or by mail (Post Office Box 10055, Hyattsville, Maryland 20782–7055).

RECORD SOURCE CATEGORIES:

DIS receives data from DHS/FEMA and HUD headquarters and field office staff. Public Housing Agencies (PHAs) routinely collect personal and income data from participants in and applicants for the Disaster Housing Assistance Program.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E9–19800 Filed 8–17–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Renewal of Information Collection: 1090–0007 [formerly 1505–0191], American Customer Satisfaction Index (ACSI) Government Customer Satisfaction Survey

AGENCY: National Business Center, Federal Consulting Group, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Business Center, Department of the Interior announces that it has submitted a request for proposed extension of an information collection to the Office of Management and Budget (OMB), and requests public comments on this submission. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public comments should be submitted to OMB by September 17, 2009, in order to be assured of consideration.

ADDRESSES: Send your written comments by facsimile to (202) 395–5806 or e-mail (*OIRA_DOCKET@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* 1090–0007 Desk Officer. Also, please send a copy of your comments to Federal Consulting Group, *Attention:* Ron Oberbillig, 1849 C St, NW., MS 314, Washington, DC 20240–0001, or by facsimile to (202) 513–7686, or via e-mail to *Ron_Oberbillig@nbc.gov.* Individuals providing comments should reference Customer Satisfaction Surveys.

FOR FURTHER INFORMATION CONTACT: To request additional information or copies of the form(s) and instructions, please write to the Federal Consulting Group, *Attention:* Ron Oberbillig, 1849 C St, NW., MS 314, Washington, DC 20240–0001, or call him on (202) 513–7677, or

send an e-mail to *Ron_Oberbillig@nbc.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. The Office of the Secretary, National Business Center has submitted a request to OMB to renew its approval of this collection of information for three years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it is operating under a currently valid OMB control number. The OMB control number for this collection is 1090–0007. The control number will be displayed on the surveys used. For expeditious administration of the surveys, the expiration date will not be displayed on the individual instruments. Response is not required to obtain a benefit.

Title: ''Customer Satisfaction Surveys''.

OMB Control Number: 1090–0007 (formerly 1050–0191).

Summary: The proposed renewal of this information collection activity provides a means to consistently assess, benchmark and improve customer satisfaction with Federal government agency programs and/or services within the Executive Branch. The Federal Consulting Group of the Department of the Interior serves as the executive agent for this methodology and has partnered with the CFI Group and the University of Michigan to offer the ACSI to Federal government agencies.

The CFI Group, a leader in customer satisfaction and customer experience management, offers a comprehensive model that quantifies the effects of quality improvements on citizen satisfaction. The CFI Group has developed the methodology and licenses it to the National Quality Research Center at the University of Michigan, which produces the American Customer Satisfaction Index (ACSI). This national indicator is developed for different economic sectors each quarter, which are then published in *The Wall Street Journal.* The ACSI was introduced in 1994 by Professor Claes Fornell under the auspices of the University of Michigan, the American Society for Quality (ASQ), and the CFI Group. It monitors and benchmarks customer satisfaction across more than 200 companies and many U.S. Federal agencies.

The ACSI is the only cross-agency methodology for obtaining comparable measures of customer satisfaction with Federal government programs and/or services. Along with other economic objectives—such as employment and growth—the quality of output (goods and services) is a part of measuring living standards. The ACSI's ultimate purpose is to help improve the quality of goods and services available to American citizens.

ACSI surveys conducted by the Federal Consulting Group are completely subject to the Privacy Act 1074, Public Law 93–579, December 31, 1974 (5 U.S.C. 522a). The agency information collection is an integral part of conducting an ACSI survey. The contractor will not be authorized to release any agency information upon completion of the survey without first obtaining permission from the Federal Consulting Group and the participating agency. In no case shall any new system of records containing privacy information be developed by the Federal Consulting Group, participating agencies, or the contractor collecting the data. In addition, participating Federal agencies may only provide information used to randomly select respondents from among established systems of records provided for such routine uses.

There is no other agency or organization which is able to provide the information that is accessible through the surveying approach used in this information collection. Further, the information will enable Federal agencies to determine customer satisfaction metrics with discrimination capability across variables. Thus, this information collection will assist Federal agencies in improving their customer service in a targeted manner which will make best use of resources to improve service to the public.

This survey asks no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Frequency of Collection: Once per survey.

Description of Respondents: Individuals who have utilized Government services.

Total Annual Burden Hours: 7,500.

Current Expiration Date: August 31, 2009.

Type of Review: Renewal.

Affected Public: Individuals and Households. Businesses and Organizations. State, Local or Tribal Government.

Estimated Number of Respondents: Participation by Federal agencies in the ACSI is expected to vary as new customer segment measures are added or deleted. However, based on historical records, projected average estimates for the next three years are as follows:

Average Expected Annual Number of Customer Satisfaction Surveys: 150.

Respondents: 37,500.

Annual responses: 37,500.

Frequency of Response: Once per survey.

Average minutes per response: 12.0.

Burden hours: 7,500 hours.

Note: It is expected that the first year there will be approximately 100 surveys initiated, the second year 150 surveys initiated, and the third year 200 surveys initiated due to expected growth in the program. The figures above represent an expected average per year over the three-year period.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on May 15, 2009 (74 FR 22954). No comments were received. This notice provides the public with an additional 30 days in which to comment on the proposed information collection activity.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review

the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection by appointment with the Federal Consulting Group at the contact information given in the ''**FOR FURTHER INFORMATION CONTACT**'' section. The comments, with names and addresses, will be available for public view during regular business hours. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to extent allowable by law.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: August 12, 2009.

Ron Oberbillig,

Chief Operating Officer, Federal Consulting Group.

[FR Doc. E9–19635 Filed 8–17–09; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-MB-2009-N175; 91200-1231-WEBB-M3]

Proposed Information Collection; National Mourning Dove Hunter Attitude Survey on Nontoxic Shot

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by October 19, 2009.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.) prohibits the unauthorized take of migratory birds and authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control the hunting of migratory game birds through regulations in 50 CFR part 20. On January 1, 1991, we banned lead shot for hunting waterfowl and coots in the United States. Wildlife managers and policymakers at all levels are becoming increasingly concerned about the exposure of mourning doves to spent lead shot.

The mourning dove is the most-hunted migratory game bird species. We plan to ask OMB for approval to sponsor a National Mourning Dove Hunter Attitude Survey on Nontoxic Shot. The Missouri Department of Conservation will conduct the survey under the auspices of the Association of Fish and Wildlife Agencies and the Service. Information from this survey will help us make nontoxic shot policy decisions and develop appropriate informational and educational programs if new regulations are necessary.

Under the Migratory Bird Harvest Information Program (HIP) (50 CFR 20.20), each State annually provides a list of all migratory bird hunters licensed by the State (OMB Control Number 1018-0023). We will use these lists to randomly select mourning dove hunters to participate in the proposed survey. We plan to collect:

(1) Demographic information (e.g., respondent age, gender, income, education, and occupation).

(2) Information on hunting experiences (e.g, hunter type, distance traveled to hunt, type of ammunition, frequency of hunting, and positive and negative aspects).

(3) Perceptions of the benefits and concerns about the use of nontoxic shot.

(4) Perceptions of the benefits and concerns about nontoxic shot regulations.

II. Data

OMB Control Number: None. This is a new collection.

Title: National Mourning Dove Hunter Attitude Survey on Nontoxic Shot.

Service Form Number(s): 3-2386.

Type of Request: New.

Affected Public: Mourning dove hunters.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Annual Number of Responses: 23,400.

Completion Time per Response: 7 minutes.

Total Annual Burden Hours: 2,730 hours.

III. Request for Comments

We invite comments concerning this IC on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 11, 2009

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E9–19697 Filed 8–17–09; 8:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

[LLORV00000–L10200000.DD0000; HAG 9–0320]

Meeting Notice for the John Day/Snake Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Vale District, Department of the Interior.

ACTION: Meeting Notice for the John Day/Snake Resource Advisory Council.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day-Snake Resource Advisory Council (JDSRAC) will meet as indicated below:

DATES: The JDSRAC Field Trip will begin at 10 a.m. PDT on September 23, 2009.

The JDSRAC meeting will begin 8 a.m. PDT on September 24, 2009.

• *Effect:* On the field trip the JDSRAC members will view first hand issues that pertain to The Nature Conservancy's management of the Zumwalt Prairie. At the meeting the JDSRAC will conduct its regular business of keeping member representatives informed about Federal actions.

ADDRESSES: On September 23 and September 24, the JDSRAC members will meet at the Wallowa-Whitman Mountain Visitor Center, 88401 Highway 82, Enterprise, Oregon 97828.

SUPPLEMENTARY INFORMATION: A field trip is scheduled for September 23, 2009, to view the Nature Conservancy's management of the Zumwalt Prairie. The business meeting will take place on September 24, 2009, at the Wallowa-Whitman Mountain Visitor Center, 88401 Highway 82, Enterprise, Oregon 97828, from 8 a.m.to 4 p.m. The meeting may include such topics as Climate Change Letter, update of the West End Off-Highway Vehicle Project, North End Umatilla N.F. Grazing Allotment Issue, Baker Resource Management Plan Alternative Development, Sub-Committee Reports, Wallowa-Whitman Forest Plan Revision, and other matters as may reasonably come before the council. The public is welcome to attend all portions of the meeting and may make oral comments to the Council at 1 p.m. on September 24, 2009. Those who verbally address the JDSRAC are asked to provide a *written* statement of their comments or presentation. Unless otherwise approved by the JDSRAC Chair, the public comment period will last no longer than 15 minutes, and each speaker may address the JDSRAC for a maximum of five minutes. If reasonable accommodation is required, please contact the BLM's Vale District at (541) 473–6213 as soon as possible.

FOR FURTHER INFORMATION CONTACT: Mark Wilkening, Public Affairs Specialist, 100 Oregon Street, Vale, OR 97918, (541) 473–6218 or e-mail *mark_wilkening@blm.gov.*

Dated: August 12, 2009.

David R. Henderson,

District Manager, Vale District Office.

[FR Doc. E9–19740 Filed 8–17–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN00000.L18200000.XZ0000]

Notice of Public Meeting: Northeast California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council will meet as indicated below.

DATES: The RAC will meet Wednesday and Thursday, Sept. 9 and 10, 2009, at the BLM Eagle Lake Field Office, 2950 Riverside Dr., Susanville, Calif. On Sept. 9, the council meets at 10 a.m. for a field tour of public lands managed by the Eagle Lake Field Office. Members of the public are welcome; they must provide their own transportation and lunch. On Sept. 10, the meeting begins at 8 a.m. in the Conference Room of the Eagle Lake Field Office, and is open to the public. Public comments will be heard at 11 a.m.

FOR FURTHER INFORMATION CONTACT: Nancy Haug, BLM Northern California District manager, (530) 221–1743; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northeast California and the northwest corner of Nevada. At this meeting, agenda topics an update on the proposed Kramer Ranch land exchange, a status report on alternative energy development proposals, an update on American Reinvestment and Recovery Act projects, a discussion of a sage-grouse translocation project, and updates from managers of the BLM Alturas, Eagle Lake and Surprise field offices. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: August 10, 2009.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. E9–19756 Filed 8–17–09; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan, aka, Gun Lake Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 147 acres, more or less, as the Match-e-be-nash-she-wish Band of Pottawatomi Indian Reservation.

FOR FURTHER INFORMATION CONTACT: Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, MS–4639–MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the land described below. The land was proclaimed to be the Match-e-be-nash-she-wish Band of Pottawatomi Indian Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Match-e-be-nash-she-wish Band of Pottawatomi Reservation, Township of Wayland, County of Allegan, State of Michigan.

Parcel A: That part of the Northwest ¼ of section 19, Town 3 North, Range 11 West, Wayland Township, Allegan County, Michigan, described as: Beginning on a point on the East-West

¼ line of said section, said point being on the Easterly line of Highway US–131 on ramp; thence North 17 degrees 29 minutes 59 seconds West 862.94 feet along said Easterly line; thence North 02 degrees 23 minutes 15 seconds West 1806.10 feet along the Easterly line of Highway US–131, said Easterly line being 125 feet Easterly of, measured at right angles to, and parallel with the survey line of said Highway US–131; thence North 87 degrees 07 minutes 54 seconds East 2470.95 feet along the North line of said section; thence South 03 degrees 27 minutes 58 seconds East 1448.14 feet along the Westerly right of way line of the Conrail Railroad (being 50.00 feet Westerly of, measured at right angles to, and parallel with the North-South ¼ line of said section) to a point which is North 03 degrees 27 minutes 58 seconds West 1186.00 feet from the East-West ¼ line of said section; thence South 86 degrees 57 minutes 24 seconds West 926.00 feet; thence South 03 degrees 27 minutes 58 seconds East 430.00 feet; thence South 86 degrees 57 minutes 24 seconds West 194.00 feet; thence South 03 degrees 27 minutes 58 seconds East 431.00 feet; thence North 86 degrees 57 minutes 24 seconds East 240.00 feet; thence South 03 degrees 27 minutes 58 seconds East 431.00 feet; thence North 86 degrees 57 minutes 24 seconds East 240.00 feet; thence South 03 degrees 27 minutes 58 seconds East 325.00 feet; thence South 03 degrees 27 minutes 58 seconds East 325.00 feet; thence South 86 degrees 57 minutes 24 seconds West 1415.62 feet along the East-West ¼ line of said Section to the point of beginning.

Parcel B: That part of the Northwest ¼ of section 19, Town 3 North, Range 11 West, Wayland Township, Allegan County, Michigan, described as: Commencing at the West ¼ corner of said section; thence North 86 degrees 57 minutes 24 seconds East 1897.60 feet along the East-West ¼ line to a point which is South 86 degrees 57 minutes 24 seconds West 930.00 feet from the center of section, said point also being the point of beginning of this description; thence continuing North 86 degrees 57 minutes 24 seconds East 682.00 feet along said ¼ line; thence North 03 degrees, 27 minutes 58 seconds West 330.00 feet parallel with the North-South ¼ line; thence North 86 degrees 57 minutes 24 seconds East 198.00 feet; thence North 03 degrees 27 minutes 58 seconds West 856.00 feet along the Westerly right of way line of the Conrail Railroad (being 50.00 feet Westerly of measured at right angles to and parallel with the North-South ¼ line of said section); thence South 86 degrees 57 minutes 24 seconds West 926.00 feet; thence South 03 degrees 27 minutes 58 seconds East 430.00 feet; thence South 86 degrees 57 minutes 24 seconds West 194.00 feet; thence South 03 degrees 27 minutes 58 seconds East 431.00 feet; thence North 86 degrees 57 minutes 24 seconds East 240.00 feet; thence South 03 degrees 27 minutes 58 seconds East 325.00 feet to the point of beginning.

The above-described lands contain a total of 147 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: August 10, 2009.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. E9–19751 Filed 8–17–09; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF JUSTICE

United States Parole Commission

Public Announcement: Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 2 p.m., Thursday, August 20, 2009.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed.

MATTERS CONSIDERED: The following matter will be considered during the closed meeting: One consideration of an original jurisdiction case pursuant to 28 CFR 2.27.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: August 11, 2009.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. E9–19626 Filed 8–17–09; 8:45 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 13, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Unemployment Compensation for Ex-servicemembers (UCX)—ETA Handbook 284.

OMB Control Number: 1205–0176.

Agency Form Number: ETA–841 and ETA–843.

Affected Public: State Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Annual Burden Hours: 88.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: Federal Law (5 U.S.C. 8521 *et seq.*) provides unemployment insurance protection, to former members of the Armed Forces (ex-servicemembers) and is referred to in abbreviated form as ''UCX''. The forms in the Handbook are used in connection with the provisions of this benefit assistance. For additional information, see related notice published at Volume 74 FR 23887 on May 21, 2009.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Benefit Accuracy Measurement (BAM) Program.

OMB Control Number: 1205–0245.

Agency Form Number: N/A.

Affected Public: State Governments.

Total Estimated Number of Respondents: 52.

Total Estimated Annual Burden Hours: 429,897.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: The Benefits Accuracy Measurement program provides reliable estimates of the accuracy of benefit payments and denied claims in the Unemployment Insurance program, and identifies the sources of miss-payments and improper denials so that their causes can be eliminated. For additional information, see related notice published at Volume 74 FR 14579 on March 31, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–19793 Filed 8–17–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[OSHA–2007–0004 (Formerly V–06–01)]

Gibraltar Chimney International, LLC, Hoffmann, Inc., and Kiewit Power Constructors Co.: Grant of a Permanent Variance

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of a grant of a permanent variance.

SUMMARY: This notice announces the grant of a permanent variance to Gibraltar Chimney International, LLC, Hoffmann, Inc., and Kiewit Power Constructors Co. (''the employers''). The permanent variance addresses the provision that regulates the tackle used for boatswain's chairs (29 CFR 1926.452 (o)(3)), as well as the provisions specified for personnel hoists by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. Instead of complying with these provisions, the employers must comply with a number of alternative conditions listed in this grant; these alternative conditions regulate hoist systems used during inside or outside chimney construction to raise or lower workers in personnel cages, personnel platforms, and boatswain's chairs between the bottom landing of a chimney and an elevated work location. Accordingly, OSHA finds that these alternative conditions protect workers at least as well as the requirements specified by 29 CFR 1926.452(o)(3) and 1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16). This permanent variance applies in Federal OSHA enforcement jurisdictions, and in those States with OSHA-approved State-Plans covering private-sector employers that have identical standards and have agreed to the terms of the variance.

DATES: The effective date of the permanent variance is August 18, 2009.

FOR FURTHER INFORMATION CONTACT: For information about this notice contact Ms. MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, Room N–3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2110; fax (202) 693–1644. For electronic copies of this notice, contact the Agency on its Webpage at *http://www.osha.gov*, and select ''**Federal Register**,'' ''Date of Publication,'' and then ''2009.''

Additional information also is available from the following OSHA Regional Offices:

U.S. Department of Labor, OSHA, JFK Federal Building, Room E340, Boston, MA 02203; *telephone:* (617) 565–9860; *fax:* (617) 565–9827.

U.S. Department of Labor, OSHA, 201 Varick Street, Room 670, New York, NY 10014; *telephone:* (212) 337–2378; *fax:* (212) 337–2371.

U.S. Department of Labor, OSHA, the Curtis Center, Suite 740 West, 170 South Independence Mall West, Philadelphia, PA 19106–3309; *telephone:* (215) 861–4900; *fax:* (215) 861–4904.

U.S. Department of Labor, OSHA, Atlanta Federal Center, 61 Forsyth Street, SW., Room 6T50, Atlanta, GA 30303; *telephone:* (404) 562–2300; *fax:* (404) 562–2295.

U.S. Department of Labor, OSHA, 230 South Dearborn Street, Room 3244, Chicago, IL 60604; *telephone:* (312) 353–2220; *fax:* (312) 353–7774.

U.S. Department of Labor, OSHA, Two Pershing Square Building, 2300 Main Street, Suite 1010, Kansas City, MO, 64108–2416; *telephone:* (816) 283–8745; *fax:* (816) 283–0547.

U.S. Department of Labor, OSHA, 525 Griffin Street, Suite 602, Dallas, TX 75202; *telephone:* (972) 850–4145; *fax:* (972) 850–4149.

U.S. Department of Labor, OSHA, 1999 Broadway, Suite 1690, Denver, CO 80202; *telephone:* (720) 264–6550; *fax:* (720) 264–6585.

U.S. Department of Labor, OSHA, 90 7th Street, Suite 18100, San Francisco, CA 94103; *telephone:* (415) 625–2547; *fax:* (415) 625–2534.

U.S. Department of Labor, OSHA, 1111 Third Avenue, Suite 715, Seattle, WA 98101–3212; *telephone:* (206) 553–5930; *fax:* (206) 553–6499.

SUPPLEMENTARY INFORMATION:

I. Background

In the past 35 years, a number of chimney construction companies have demonstrated to OSHA that several personnel-hoist requirements (*i.e.*, paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552), as well as the tackle requirements for boatswain's chairs (*i.e.*, paragraph (o)(3) of 29 CFR 1926.452), result in access problems that pose a serious danger to their workers. These companies requested permanent variances from these requirements, and proposed alternative equipment and procedures to protect workers while being transported to and from their elevated worksites during chimney construction and repair. The Agency

subsequently granted these companies permanent variances based on the proposed alternatives (*see* 38 FR 8545 (April 3, 1973), 44 FR 51352 (August 31, 1979), 50 FR 20145 (May 14, 1985), 50 FR 40627 (October 4, 1985), 52 FR 22552 (June 12, 1987), 68 FR 52961 (September 8, 2003), 70 FR 72659 (December 6, 2005), and 71 FR 10557 (March 1, 2006)).[1]

Gibraltar Chimney International, LLC, Hoffmann, Inc., and Kiewit Power Constructors Co. (formerly, Kiewit Industrial Co.) applied for a permanent variance from the same personnel-hoist and boatswain's-chair requirements as the previous companies, and proposed as an alternative to these requirements the same equipment and procedures approved by OSHA in the earlier variances. The Agency published their variance applications in the **Federal Register** on February 8, 2007 (72 FR 6002).

Gibraltar Chimney International, LLC, Hoffmann, Inc., and Kiewit Power Constructors Co. (''the employers'') construct, remodel, repair, maintain, inspect, and demolish tall chimneys made of reinforced concrete, brick, and steel. This work, which occurs throughout the United States, requires the employers to transport workers and construction material to and from elevated work platforms and scaffolds located, respectively, inside and outside tapered chimneys. While tapering contributes to the stability of a chimney, it necessitates frequent relocation of, and adjustments to, the work platforms and scaffolds so that they will fit the decreasing circumference of the chimney as construction progresses upwards.

To transport workers to various heights inside and outside a chimney, the employers proposed in their variance applications to use a hoist system that lifts and lowers personnel-transport devices that include personnel cages, personnel platforms, or boatswain's chairs. In this regard, the employers proposed to use personnel cages, personnel platforms, or boatswain's chairs solely to transport workers with the tools and materials necessary to do their work, and not to transport only materials or tools on these devices in the absence of workers. In addition, the employers proposed to attach a hopper or concrete bucket to the hoist system to raise or lower material inside or outside a chimney.

The employers also proposed to use a hoist engine, located and controlled outside the chimney, to power the hoist system. The proposed system consisted of a wire rope that: spools off a winding drum (also known as the hoist drum or rope drum) into the interior of the chimney; passes to a footblock that redirects the rope from the horizontal to the vertical planes; goes from the footblock through the overhead sheaves above the elevated platform; and finally drops to the bottom landing of the chimney where it connects to a personnel- or material-transport device. The cathead, which is a superstructure at the top of the system, supports the overhead sheaves. The overhead sheaves (and the vertical span of the hoist system) move upward with the system as chimney construction progresses. Two guide cables, suspended from the cathead, eliminate swaying and rotation of the load. If the hoist rope breaks, safety clamps activate and grip the guide cables to prevent the load from falling. The employers proposed to use a headache ball, located on the hoist rope directly above the load, to counterbalance the rope's weight between the cathead sheaves and the footblock.

Additional conditions that the employers proposed to follow to improve worker safety included:

- Attaching the wire rope to the personnel cage using a keyed-screwpin shackle or positive-locking link;
- Adding limit switches to the hoist system to prevent overtravel by the personnel- or material-transport devices;
- Providing the safety factors and other precautions required for personnel hoists specified by the pertinent provisions of 29 CFR 1926.552(c), including canopies and shields to protect workers located in a personnel cage from material that may fall during hoisting and other overhead activities;
- Providing falling object protection for scaffold platforms as specified by 29 CFR 1926.451(h)(1);
- Conducting tests and inspections of the hoist system as required by 29 CFR 1926.20(b)(2) and 1926.552(c)(15);
- Establishing an accident prevention program that conforms to 29 CFR 1926.20(b)(3);
- Ensuring that workers who use a personnel platform or boatswain's chair wear full-body harnesses and lanyards, and that the lanyards are attached to the lifelines during the entire period of vertical transit; and
- Securing the lifelines (used with a personnel platform or boatswain's chair) to the rigging at the top of the chimney and to a weight at the bottom of the chimney to provide maximum stability to the lifelines.

II. Proposed Variance From 29 CFR 1926.452(o)(3)

The employers noted in their variance request that it is necessary, on occasion, to use a boatswain's chair to transport workers to and from a bracket scaffold on the outside of an existing chimney during flue installation or repair work, or to transport them to and from an elevated scaffold located inside a chimney that has a small or tapering diameter. Paragraph (o)(3) of 29 CFR 1926.452, which regulates the tackle used to rig a boatswain's chair, states that this tackle must ''consist of correct size ball bearings or bushed blocks containing safety hooks and properly 'eye-spliced' minimum five-eighth (5/8) inch diameter first-grade manila rope [or equivalent rope].''

The primary purpose of this paragraph is to allow a worker to safely control the ascent, descent, and stopping locations of the boatswain's chair. However, the employers stated in their variance request that, because of space limitations, the required tackle is difficult or impossible to operate on some chimneys that are over 200 feet tall. Therefore, as an alternative to complying with the tackle requirements specified by 29 CFR 1926.452(o)(3), the employers proposed to use the hoisting system described above in section I (''Background'') of this notice to raise or lower workers in a personnel cage to work locations both inside and outside a chimney. In addition, the employers proposed to use a personnel cage for this purpose to the extent that adequate space is available, and to use a personnel platform when using a personnel cage was infeasible because of limited space. When available space makes using a personnel platform infeasible, the employers proposed to use a boatswain's chair to lift workers to work locations. The proposed variance limited use of the boatswain's chair to elevations above the last work location that the personnel platform can reach; under these conditions, the employers proposed to attach the boatswain's chair directly to the hoisting cable only when the structural arrangement precludes the safe use of the block and tackle required by 29 CFR 1926.452(o)(3).

III. Proposed Variance From 29 CFR 1926.552(c)

Paragraph (c) of 29 CFR 1926.552 specifies the requirements for enclosed hoisting systems used to transport workers from one elevation to another.

[1] Zurn Industries, Inc. received two permanent variances from OSHA. The first variance, granted on May 14, 1985 (50 FR 20145), addressed the boatswain's-chair provision (then in paragraph (l)(5) of 29 CFR 1926.451), as well as the hoist-platform requirements of paragraphs (c)(1), (c)(2), (c)(3), and (c)(14)(i) of 29 CFR 1926.552. The second variance, granted on June 12, 1987 (52 FR 22552), includes these same paragraphs, as well as paragraphs (c)(4), (c)(8), (c)(13), and (c)(16) of 29 CFR 1926.552.

This paragraph ensures that employers transport workers safely to and from elevated work platforms by mechanical means during the construction, alteration, repair, maintenance, or demolition of structures such as chimneys. However, this standard does not provide specific safety requirements for hoisting workers to and from elevated work platforms and scaffolds in tapered chimneys; the tapered design requires frequent relocation of, and adjustment to, the work platforms and scaffolds. The space in a small-diameter or tapered chimney is not large enough or configured so that it can accommodate an enclosed hoist tower. Moreover, using an enclosed hoist tower for outside operations exposes workers to additional fall hazards because they need to install extra bridging and bracing to support a walkway between the hoist tower and the tapered chimney.

Paragraph (c)(1) of 29 CFR 1926.552 requires the employers to enclose hoist towers located outside a chimney on the side or sides used for entrance to, and exit from, the chimney; these enclosures must extend the full height of the hoist tower. The employers asserted in their proposed variance that it is impractical and hazardous to locate a hoist tower outside tapered chimneys because it becomes increasingly difficult, as a chimney rises, to erect, guy, and brace a hoist tower; under these conditions, access from the hoist tower to the chimney or to the movable scaffolds used in constructing the chimney exposes workers to a serious fall hazard. Additionally, they noted that the requirement to extend the enclosures 10 feet above the outside scaffolds often exposes the workers involved in building these extensions to dangerous wind conditions.

Paragraph (c)(2) of 29 CFR 1926.552 requires that employers enclose all four sides of a hoist tower even when the tower is located inside a chimney; the enclosure must extend the full height of the tower. In the proposed variance, the employers contended that it is hazardous for workers to erect and brace a hoist tower inside a chimney, especially small-diameter or tapered chimneys or chimneys with sublevels, because these structures have limited space and cannot accommodate hoist towers; space limitations result from chimney design (*e.g.*, tapering), as well as reinforced steel projecting into the chimney from formwork that is near the work location.

As an alternative to complying with the hoist-tower requirements of 29 CFR 1926.552(c)(1) and (c)(2), the employers proposed to use the hoist system discussed in section I (''Background'') of this notice to transport workers to and from work locations inside and outside chimneys. They claimed that this hoist system would make it unnecessary for them to comply with other provisions of 29 CFR 1926.552(c) that specify requirements for hoist towers, including:

- (c)(3)—Anchoring the hoist tower to a structure;
- (c)(4)—Hoistway doors or gates;
- (c)(8)—Electrically interlocking entrance doors or gates that prevent hoist movement when the doors or gates are open;
- (c)(13)—Emergency stop switch located in the car;
- (c)(14)(i)—Using a minimum of two wire ropes for drum-type hoisting; and
- (c)(16)—Construction specifications for personnel hoists, including materials, assembly, structural integrity, and safety devices.

The employers asserted that the proposed hoisting system protected workers at least as effectively as the personnel-hoist requirements of 29 CFR 1926.552(c). The following section of this preamble reviews the comments received on the employers' proposed variance.

IV. Comments on the Proposed Variance

OSHA received no comments on the proposed variance, including no comments from State-Plan States and Territories.

V. Multi-State Variance

The variance applications stated that the employers perform chimney work in a number of geographic locations in the United States, some of which could include locations in one or more of the States and Territories that operate OSHA-approved safety and health programs under Section 18 of the Occupational Safety and Health Act of 1970 (''State-Plan States and Territories''; *see* 29 U.S.C. 651 *et seq.*). State-Plan States and Territories have primary enforcement responsibility over the work performed in those States and Territories. Under the provisions of 29 CFR 1952.9 (''Variances affecting multi-state employers'') and 29 CFR 1905.14(b)(3) (''Actions on applications''), a permanent variance granted by the Agency becomes effective in State-Plan States and Territories as an authoritative interpretation of the applicants' compliance obligation when: (1) The relevant standards are the same as the Federal OSHA standards from which the applicants are seeking the permanent variance; and (2) the State-Plan State or Territory does not object to the terms of the variance application.

As noted in the previous section of this notice (Section IV (''Comments on the Proposed Variance'')), OSHA received no comments on the variance application published in the **Federal Register** from any State-Plan State or Territory. However, several State-Plan States and Territories commented on earlier variance applications published in the **Federal Register** involving the same standards and submitted by other employers engaged in chimney construction and repair; OSHA is relying on these previous comments to determine the position of these State-Plan States and Territories on the variance applications submitted by the present employers.[2] The remaining paragraphs in this section provide a summary of the positions taken by the State-Plan States and Territories on the proposed alternative conditions.

The following thirteen State-Plan States and one Territory have standards identical to the Federal OSHA standards and agreed to accept the alternative conditions: Alaska, Arizona, Indiana, Maryland, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Vermont, Virginia, and Wyoming. Of the remaining 12 States and Territories with OSHA-approved State plans, three of the States and one Territory (Connecticut, New Jersey, New York, and the Virgin Islands) cover only public sector workers and have no authority over the private sector workers addressed in this variance application (*i.e.*, that authority continues to reside with Federal OSHA).

Four States (Kentucky, Michigan, South Carolina, and Utah) accepted the proposed alternative when specific additional requirements are fulfilled. Kentucky noted that, while it agreed with the terms of the variance, Kentucky statutory law requires affected employers to apply to the State for a State variance. Michigan agreed to the alternative conditions, but noted that its standards are not identical to the OSHA standards covered by the variance application. Therefore, Michigan cautioned that employers electing to use the variance in that State must comply with several provisions in the Michigan standards that are not addressed in the OSHA standard. South Carolina indicated that it would accept the

[2] *See* 68 FR 52961 (Oak Park Chimney Corp. and American Boiler & Chimney Co.), 70 FR 72659 (International Chimney Corporation, Karrena International, LLC, and Matrix Service Industrial Contractors, Inc.), and 71 FR 10557 (Commonwealth Dynamics, Inc., Mid-Atlantic Boiler & Chimney, Inc., and R and P Industrial Chimney Co., Inc.).

alternative conditions, but noted that, for the grant of such a variance to be accepted by the South Carolina Commissioner of Labor, the employers must file the grant at the Commissioner's office in Columbia, South Carolina. Utah agreed to accept the Federal variance, but requires the employers to contact the Occupational Safety and Health Division, Labor Commission of Utah, regarding a procedural formality that must be completed before implementing the variance in that State.

California, Hawaii, Iowa, and Washington either had different requirements in their standards or declined to accept the terms of the variance. Therefore, the employers must apply separately for a permanent variance from these four States.

Based on the responses previously received from State-Plan States and Territories, the permanent Federal OSHA variance will be effective in the following thirteen State-Plan States and one Territory: Alaska, Arizona, Indiana, Maryland, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Virginia, Vermont, and Wyoming; and in four additional states, Kentucky, Michigan, South Carolina, and Utah, when the employers meet specific additional requirements. However, this permanent variance does not apply in California, Hawaii, Iowa, and Washington State. As stated earlier, in the three States and one Territory (Connecticut, New Jersey, New York, and the Virgin Islands) that have State-Plan programs that cover only public sector workers, authority over the employers under the permanent variance continues to reside with Federal OSHA.

VI. Nonmandatory Conditions Added to the Permanent Variance

After publishing the variance application of Gibraltar Chimney International, LLC, Hoffmann, Inc., and Kiewit Power Constructors Co. in the **Federal Register,** OSHA received additional variance applications from chimney construction companies. The Agency subsequently combined these applications and published them in the **Federal Register** (*see* 74 FR 4237) after adding several conditions that it believes will increase worker protection at little additional cost or burden to the employers. These added conditions include a requirement for employers to install attachment points inside personnel cages for securing fall arrest systems, and to ensure that workers secure their fall arrest systems to these attachment points when using a personnel cage. The Agency believes this additional condition will protect workers from falling out of a cage in the event the door of the cage opens inadvertently during lifting operations.

OSHA also added other conditions that it believes are necessary to protect workers from shearing or struck-by hazards associated with using hoist systems in chimney construction. Workers encounter these hazards when using personnel platforms or boatswain's chairs to transport them to or from an elevated jobsite. During transport, these personnel transport devices pass near structures, including work platforms and scaffolds, that could crush or inflict other serious injury on a hand, arm, foot, leg, or other body part that extends beyond the confines of the personnel transport device. To prevent these injuries, OSHA added a condition to the variance applications that would require employers to instruct workers who use personnel platforms or boatswain's chairs to recognize the shearing and struck-by hazards associated with personnel-transport operations, and how to avoid these hazards. Additionally, the condition would require employers to attach to the personnel platforms and boatswain's chairs, a readily visible warning of the hazards; this warning will supplement and reinforce the hazard training by reminding workers of the hazards and how to avoid them.

To address another struck-by hazard, OSHA added a condition that would require employers to establish a safety zone around the bottom landing where workers access personnel- and material-transport devices. The employers would have to ensure that workers enter the safety zone only to access a transport device that is in the area circumscribed by the safety zone, and only when the hoist system is not in operation. OSHA believes that this condition will prevent a transport device that is descending from an elevated jobsite from striking a worker who is in or near the bottom-landing area and is not aware of the descending device. During descent, it also is difficult for workers in or on these devices to detect a worker beneath them. Therefore, it would be necessary for the employers to establish a safety zone and ensure that workers only enter the safety zone when a transport device is at the bottom landing and not in operation (*i.e.,* the drive components of the hoist system are disengaged and the braking mechanism is properly applied).

OSHA also added another condition that would require employers to notify (1) the nearest OSHA Area Office, or appropriate State-Plan Office, at least 15 days before commencing chimney construction operations covered by the variance, and (2) OSHA national headquarters as soon as an employer knows that it will cease doing business or transfers the activities covered by the variance to another company. These administrative requirements would enable OSHA to more easily enforce, and determine the status of, the variance than is presently the case. Currently, OSHA has little or no information about chimney construction activities conducted under a variance, making it difficult for it to assess compliance with the conditions specified under the variance. Additionally, OSHA finds that construction companies cease operations or transfer chimney construction assets to successor companies without informing the Agency that the variance is no longer needed, or requesting that OSHA reassign the variance to the successor company. The Agency believes that these notification requirements will improve administrative oversight of the variance program, thereby enhancing worker safety and reducing its administrative burden.

OSHA specifies these additional conditions in Appendix A of the order (*see* Section VIII (''Order''), below). As the employers, workers, and other members of the regulated community did not have an opportunity to comment on these conditions, OSHA considers these conditions to be nonmandatory, and not enforceable under the order. However, as noted in the previous paragraphs of this section, OSHA believes that these conditions will increase the protection afforded to workers under the permanent variance, and will do so at little additional cost or burden to employers. Therefore, OSHA strongly encourages the employers to implement these additional conditions. In this regard, OSHA will propose in the near future to revise permanent variances issued earlier (*i.e.,* prior to 2009) for chimney construction to include these additional conditions.

VII. Decision

Gibraltar Chimney International, LLC, Hoffmann, Inc., and Kiewit Power Constructors Co. seek a permanent variance from the provision that regulates the tackle used for boatswain's chairs (29 CFR 1926.452(o)(3)), as well as the provisions specified for personnel hoists by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. Paragraph (o)(3) of 29 CFR 1926.452 states that the tackle used for boatswain's chairs must ''consist of correct size ball bearings or bushed blocks containing safety hooks and properly 'eye-spliced' minimum

five-eighth (5/8) inch diameter first-grade manila rope [or equivalent rope].'' The primary purpose of this provision is to allow a worker to safely control the ascent, descent, and stopping locations of the boatswain's chair. The proposed alternative to these requirements allows the employer to use a boatswain's chair to lift workers to work locations inside and outside a chimney when both a personnel cage and a personnel platform are infeasible. The employers proposed to attach the boatswain's chair to the hoisting system described as an alternative for paragraph (c) of 29 CFR 1926.552.

Paragraph (c) of 29 CFR 1926.552 specifies the requirements for enclosed hoisting systems used to transport personnel from one elevation to another. This paragraph ensures that employers transport workers safely to and from elevated work platforms by mechanical means during construction work involving structures such as chimneys. In this regard, paragraph (c)(1) of 29 CFR 1926.552 requires employers to enclose hoist towers located outside a chimney on the side or sides used for entrance to, and exit from, the structure; these enclosures must extend the full height of the hoist tower. Under the requirements of paragraph (c)(2) of 29 CFR 1926.552, employers must enclose all four sides of a hoist tower located inside a chimney; these enclosures also must extend the full height of the tower.

As an alternative to complying with the hoist tower requirements of 29 CFR 1926.552(c)(1) and (c)(2), the employers proposed to use a hoist system to transport workers to and from elevated work locations inside and outside chimneys. The proposed hoist system includes a hoist machine, cage, safety cables, and safety measures such as limit switches to prevent overrun of the cage at the top and bottom landings, and safety clamps that grip the safety cables if the main hoist line fails. To transport workers to and from elevated work locations, the employers proposed to attach a personnel cage to the hoist system. However, when they can demonstrate that adequate space is not available for the cage, they may use a personnel platform above the last worksite that the cage can reach. Further, when the employers show that space limitations make it infeasible to use a work platform for transporting workers, they have proposed to use a boatswain's chair above the last worksite serviced by the personnel platform. Using the proposed hoist system as an alternative to the hoist tower requirements of 29 CFR 1926.552(c)(1) and (c)(2) eliminates the need to comply with the other provisions of 29 CFR 1926.552(c) that specify requirements for hoist towers.

Accordingly, the employers have requested a permanent variance from these and related provisions (*i.e.,* paragraphs (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16)).

Under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), and based on the record discussed above, the Agency finds that when the employers comply with the conditions of the following order, the working conditions of their workers will be at least as safe and healthful as if the employers complied with the working conditions specified by paragraph (o)(3) of 29 CFR 1926.452, and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. This decision is applicable in all States under Federal OSHA enforcement jurisdiction, and in the 14 State-Plan States with standards identical to the Federal standards (Alaska, Arizona, Indiana, Maryland, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Virginia, Vermont, and Wyoming). In Kentucky, Michigan, South Carolina and Utah, the employers must meet additional conditions before this variance will apply in those States. This decision does not apply in California, Hawaii, Iowa, and Washington.

VIII. Order

OSHA issues this order authorizing Gibraltar Chimney International, LLC, Hoffmann, Inc., and Kiewit Power Constructors Co. (''the employers'') to comply with the following conditions instead of complying with paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. This order applies in Federal OSHA enforcement jurisdictions, and in those States with OSHA-approved State plans that have identical standards and have agreed to the terms of the variance.

1. Scope of the Permanent Variance

(a) This permanent variance applies only to tapered chimneys when the employers use a hoist system during inside or outside chimney construction to raise or lower their workers between the bottom landing of a chimney and an elevated work location on the inside or outside surface of the chimney.

(b) When using a hoist system as specified in this permanent variance, the employers must:

(i) Use the personnel cages, personnel platforms, or boatswain's chairs raised and lowered by the hoist system solely to transport workers with the tools and materials necessary to do their work; and

(ii) Attach a hopper or concrete bucket to the hoist system to raise and lower all other materials and tools inside or outside a chimney.

(c) Except for the requirements specified by 29 CFR 1926.452 (o)(3) and 1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16), the employers must comply fully with all other applicable provisions of 29 CFR parts 1910 and 1926.

2. Replacing a Personnel Cage With a Personnel Platform or a Boatswain's Chair

(a) *Personnel platform.* When the employers demonstrate that available space makes a personnel cage for transporting workers infeasible, they may replace the personnel cage with a personnel platform when they limit use of the personnel platform to elevations above the last work location that the personnel cage can reach.

(b) *Boatswain's chair.* Employers must:

(i) Before using a boatswain's chair, demonstrate that available space makes it infeasible to use a personnel platform for transporting workers;

(ii) Limit use of a boatswain's chair to elevations above the last work location that the personnel platform can reach; and

(iii) Use a boatswain's chair in accordance with tackle requirements specified by 29 CFR 1926.452(o)(3), unless they can demonstrate that the structural arrangement of the chimney precludes such use.

3. Qualified Competent Person

(a) The employers must:

(i) Provide a qualified competent person, as specified in paragraphs (f) and (m) of 29 CFR 1926.32, who is responsible for ensuring that the design, maintenance, and inspection of the hoist system comply with the conditions of this grant and with the appropriate requirements of 29 CFR part 1926 (''Safety and Health Regulations for Construction''); and

(ii) Ensure that the qualified competent person is present at ground level to assist in an emergency whenever the hoist system is raising or lowering workers.

(b) The employers must use a qualified competent person to design and maintain the cathead described under Condition 8 (''Cathead and Sheave''), below.

4. Hoist Machine

(a) *Type of hoist.* The employers must designate the hoist machine as a portable personnel hoist.

(b) *Raising or lowering a transport.* The employers must ensure that:

(i) The hoist machine includes a base-mounted drum hoist designed to control line speed; and

(ii) Whenever they raise or lower a personnel or material hoist (*e.g.,* a personnel cage, personnel platform, boatswain's chair, hopper, concrete bucket) using the hoist system:

(A) The drive components are engaged continuously when an empty or occupied transport is being lowered (*i.e.,* no ''freewheeling'');

(B) The drive system is interconnected, on a continuous basis, through a torque converter, mechanical coupling, or an equivalent coupling (*e.g.,* electronic controller, fluid clutches, hydraulic drives).

(C) The braking mechanism is applied automatically when the transmission is in the neutral position and a forward-reverse coupling or shifting transmission is being used; and

(D) No belts are used between the power source and the winding drum.

(c) *Power source.* The employers must power the hoist machine by an air, electric, hydraulic, or internal combustion drive mechanism.

(d) *Constant-pressure control switch.* The employers must:

(i) Equip the hoist machine with a hand- or foot-operated constant-pressure control switch (*i.e.,* a ''deadman control switch'') that stops the hoist immediately upon release; and

(ii) Protect the control switch to prevent it from activating if the hoist machine is struck by a falling or moving object.

(e) *Line-speed indicator.* The employers must:

(i) Equip the hoist machine with an operating line-speed indicator maintained in good working order; and

(ii) Ensure that the line-speed indicator is in clear view of the hoist operator during hoisting operations.

(f) *Braking systems.* The employers must equip the hoist machine with two (2) independent braking systems (*i.e.,* one automatic and one manual) located on the winding side of the clutch or couplings, with each braking system being capable of stopping and holding 150 percent of the maximum rated load.

(g) *Slack-rope switch.* The employers must equip the hoist machine with a slack-rope switch to prevent rotation of the winding drum under slack-rope conditions.

(h) *Frame.* The employers must ensure that the frame of the hoist machine is a self-supporting, rigid, welded steel structure, and that holding brackets for anchor lines and legs for anchor bolts are integral components of the frame.

(i) *Stability.* The employers must secure hoist machines in position to prevent movement, shifting, or dislodgement.

(j) *Location.* The employers must:

(i) Locate the hoist machine far enough from the footblock to obtain the correct fleet angle for proper spooling of the cable on the drum; and

(ii) Ensure that the fleet angle remains between one-half degree (½°) and one and one-half degrees (1½°) for smooth drums, and between one-half degree (½°) and two degrees (2°) for grooved drums, with the lead sheave centered on the drum.[1]

(k) *Drum and flange diameter.* The employers must:

(i) Provide a winding drum for the hoist that is at least 30 times the diameter of the rope used for hoisting; and

(ii) Ensure that the winding drum has a flange diameter that is at least one and one-half (1½) times the diameter of the winding drum.

(l) *Spooling of the rope.* The employers must *never* spool the rope closer than two (2) inches (5.1 cm) from the outer edge of the winding drum flange.

(m) *Electrical system.* The employers must ensure that all electrical equipment is weatherproof.

(n) *Limit switches.* The employers must equip the hoist system with limit switches and related equipment that automatically prevent overtravel of a personnel cage, personnel platform, boatswain's chair, or material-transport device at the top of the supporting structure and at the bottom of the hoistway or lowest landing level.

5. Methods of Operation

(a) *Worker qualifications and training.* The employers must:

(i) Ensure that only trained and experienced workers, who are knowledgeable of hoist-system operations, control the hoist machine; and

(ii) Provide instruction, periodically and as necessary, on how to operate the hoist system, to each worker who uses a personnel cage for transportation.

(b) *Speed limitations.* The employers must *not* operate the hoist at a speed in excess of:

(i) Two hundred and fifty (250) feet (76.9 m) per minute when a personnel cage is being used to transport workers;

(ii) One hundred (100) feet (30.5 m) per minute when a personnel platform or boatswain's chair is being used to transport workers; or

(iii) A line speed that is consistent with the design limitations of the system when only material is being hoisted.

(c) *Communication.* The employers must:

(i) Use a voice-mediated intercommunication system to maintain communication between the hoist operator and the workers located in or on a moving personnel cage, personnel platform, or boatswain's chair;

(ii) Stop hoisting if, for any reason, the communication system fails to operate effectively; and

(iii) Resume hoisting only when the site superintendent determines that it is safe to do so.

6. Hoist Rope

(a) *Grade.* The employers must use a wire rope for the hoist system (*i.e.,* ''hoist rope'') that consists of extra-improved plow steel, an equivalent grade of non-rotating rope, or a regular lay rope with a suitable swivel mechanism.

(b) *Safety factor.* The employers must maintain a safety factor of at least eight (8) times the safe workload throughout the entire length of hoist rope.

(c) *Size.* The employers must use a hoist rope that is at least one-half (½) inch (1.3 cm) in diameter.

(d) *Inspection, removal, and replacement.* The employers must:

(i) Thoroughly inspect the hoist rope before the start of each job and on completing a new setup;

(ii) Maintain the proper diameter-to-diameter ratios between the hoist rope and the footblock and the sheave by inspecting the wire rope regularly (*see* Conditions 7(c) and 8(d), below); and

(iii) Remove and replace the wire rope with new wire rope when any of the conditions specified by 29 CFR 1926.552(a)(3) occurs.

(e) *Attachments.* The employers must attach the rope to a personnel cage, personnel platform, or boatswain's chair with a keyed-screwpin shackle or positive-locking link.

(f) *Wire-rope fastenings.* When the employers use clip fastenings (*e.g.,* U-bolt wire-rope clips) with wire ropes, they must:

(i) Use Table H–20 of 29 CFR 1926.251 to determine the number and spacing of clips;

(ii) Use at least three (3) drop-forged clips at each fastening;

(iii) Install the clips with the ''U'' of the clips on the dead end of the rope; and

[1] This variance adopts the definition of, and specifications for, fleet angle from *Cranes and Derricks,* H. I. Shapiro, *et al.* (eds.); New York: McGraw-Hill; 3rd ed., 1999, page 592. Accordingly, the fleet angle is ''[t]he angle the rope leading onto a [winding] drum makes with the line perpendicular to the drum rotating axis when the lead rope is making a wrap against the flange.''

(iv) Space the clips so that the distance between them is six (6) times the diameter of the rope.

7. Footblock

(a) *Type of block.* The employers must use a footblock:

(i) Consisting of construction-type blocks of solid single-piece bail with a safety factor that is at least four (4) times the safe workload, or an equivalent block with roller bearings;

(ii) Designed for the applied loading, size, and type of wire rope used for hoisting;

(iii) Designed with a guard that contains the wire rope within the sheave groove;

(iv) Bolted rigidly to the base; and

(v) Designed and installed so that it turns the moving wire rope to and from the horizontal or vertical direction as required by the direction of rope travel.

(b) *Directional change.* The employers must ensure that the angle of change in the hoist rope from the horizontal to the vertical direction at the footblock is approximately 90°.

(c) *Diameter.* The employers must ensure that the line diameter of the footblock is at least 24 times the diameter of the hoist rope.

8. Cathead and Sheave

(a) *Support.* The employers must use a cathead (*i.e.,* ''overhead support'') that consists of a wide-flange beam, or two (2) steel-channel sections securely bolted back-to-back to prevent spreading.

(b) *Installation.* The employers must ensure that:

(i) All sheaves revolve on shafts that rotate on bearings; and

(ii) The bearings are mounted securely to maintain the proper bearing position at all times.

(c) *Rope guides.* The employers must provide each sheave with appropriate rope guides to prevent the hoist rope from leaving the sheave grooves when the rope vibrates or swings abnormally.

(d) *Diameter.* The employers must use a sheave with a diameter that is at least 24 times the diameter of the hoist rope.

9. Guide Ropes

(a) *Number and construction.* The employers must affix two (2) guide ropes by swivels to the cathead. The guide ropes must:

(i) Consist of steel safety cables not less than one-half (1/2) inch (1.3 cm) in diameter; and

(ii) Be free of damage or defect at all times.

(b) *Guide rope fastening and alignment tension.* The employers must fasten one end of each guide rope securely to the overhead support, with appropriate tension applied at the foundation.

(c) *Height.* The employers must rig the guide ropes along the entire height of the hoist-machine structure.

10. Personnel Cage

(a) *Construction.* A personnel cage must be of steel frame construction and capable of supporting a load that is four (4) times its maximum rated load capacity. The employers also must ensure that the personnel cage has:

(i) A top and sides that are permanently enclosed (except for the entrance and exit);

(ii) A floor securely fastened in place;

(iii) Walls that consist of 14-gauge, one-half (1/2) inch (1.3 cm) expanded metal mesh, or an equivalent material;

(iv) Walls that cover the full height of the personnel cage between the floor and the overhead covering;

(v) A sloped roof constructed of one-eighth (1/8) inch (0.3 cm) aluminum, or an equivalent material; and

(vi) Safe handholds (*e.g.*, rope grips—but *not* rails or hard protrusions [2]) that accommodate each occupant.

(b) *Overhead weight.* A personnel cage must have an overhead weight (*e.g.*, a headache ball of appropriate weight) to compensate for the weight of the hoist rope between the cathead and the footblock. In addition, the employers must:

(i) Ensure that the overhead weight is capable of preventing line run; and

(ii) Use a means to restrain the movement of the overhead weight so that the weight does *not* interfere with safe personnel hoisting.

(c) *Gate.* The personnel cage must have a gate that:

(i) Guards the full height of the entrance opening; and

(ii) Has a functioning mechanical lock that prevents accidental opening.

(d) *Operating procedures.* The employers must post the procedures for operating the personnel cage conspicuously at the hoist operator's station.

(e) *Capacity.* The employers must:

(i) Hoist no more than four (4) occupants in the cage at any one time; and

(ii) Ensure that the rated load capacity of the cage is at least 250 pounds (113.4 kg) for each occupant so hoisted.

(f) *Worker notification.* The employers must post a sign in each personnel cage notifying workers of the following conditions:

(i) The standard rated load, as determined by the initial static drop test specified by Condition 10(g) (''Static drop tests''), below; and

(ii) The reduced rated load for the specific job.

(g) *Static drop tests.* The employers must:

(i) Conduct static drop tests of each personnel cage that comply with the definition of ''static drop test'' specified by section 3 (''Definitions'') and the static drop-test procedures provided in section 13 (''Inspections and Tests'') of American National Standards Institute (ANSI) standard A10.22–1990 (R1998) (''American National Standard for Rope-Guided and Nonguided Worker's Hoists—Safety Requirements'');

(ii) Perform the initial static drop test at 125 percent of the maximum rated load of the personnel cage, and subsequent drop tests at no less than 100 percent of its maximum rated load; and

(iii) Use a personnel cage for raising or lowering workers only when no damage occurred to the components of the cage as a result of the static drop tests.

11. Safety Clamps

(a) *Fit to the guide ropes.* The employers must:

(i) Fit appropriately designed and constructed safety clamps to the guide ropes; and

(ii) Ensure that the safety clamps do not damage the guide ropes when in use.

(b) *Attach to the personnel cage.* The employers must attach safety clamps to each personnel cage for gripping the guide ropes.

(c) *Operation.* The safety clamps attached to the personnel cage must:

(i) Operate on the ''broken rope principle'' defined in section 3 (''Definitions'') of ANSI standard A10.22–1990 (R1998);

(ii) Be capable of stopping and holding a personnel cage that is carrying 100 percent of its maximum rated load and traveling at its maximum allowable speed if the hoist rope breaks at the footblock; and

(iii) Use a pre-determined and pre-set clamping force (*i.e.,* the ''spring compression force'') for each hoist system.

(d) *Maintenance.* The employers must keep the safety clamp assemblies clean and functional at all times.

12. Overhead Protection

(a) The employers must install a canopy or shield over the top of the personnel cage that is made of steel plate at least three-sixteenths (3/16) of an inch (4.763 mm) thick, or material of equivalent strength and impact

[2] To reduce impact hazards should workers lose their balance because of cage movement.

resistance, to protect workers (*i.e.*, both inside and outside the chimney) from material and debris that may fall from above.

(b) The employers must ensure that the canopy or shield slopes to the outside of the personnel cage.[3]

13. Emergency-Escape Device

(a) *Location.* The employers must provide an emergency-escape device in at least one of the following locations:

(i) In the personnel cage, provided that the device is long enough to reach the bottom landing from the highest possible escape point; or

(ii) At the bottom landing, provided that a means is available in the personnel cage for the occupants to raise the device to the highest possible escape point.

(b) *Operating instructions.* The employers must ensure that written instructions for operating the emergency-escape device are attached to the device.

(c) *Training.* The employers must instruct each worker who uses a personnel cage for transportation on how to operate the emergency-escape device:

(i) Before the worker uses a personnel cage for transportation; and

(ii) Periodically, and as necessary, thereafter.

14. Personnel Platforms

(a) *Personnel platforms.* When the employers elect to replace the personnel cage with a personnel platform in accordance with Condition 2(a) of this variance, they must:

(i) Ensure that an enclosure surrounds the platform, and that this enclosure is at least 42 inches (106.7 cm) above the platform's floor;

(ii) Provide overhead protection when an overhead hazard is, or could be, present; and

(iii) Comply with the applicable scaffolding strength requirements specified by 29 CFR 1926.451(a)(1).

(b) *Fall-protection equipment.* Before workers use work platforms or boatswains' chairs, the employers must:

(i) Equip the workers with, and ensure that they use, full body harnesses, lanyards, and lifelines as specified by 29 CFR 1926.104 and the applicable requirements of 29 CFR 1926.502(d); and

(ii) Ensure that workers secure the lifelines to the top of the chimney and to a weight at the bottom of the chimney, and that the workers' lanyards are attached to the lifeline during the entire period of vertical transit.

[3] Paragraphs (a) and (b) were adapted from OSHA's Underground Construction Standard (29 CFR 1926.800(t)(4)(iv)).

15. Inspections, Tests, and Accident Prevention

(a) The employers must:

(i) Conduct inspections of the hoist system as required by 29 CFR 1926.20(b)(2);

(ii) Ensure that a competent person conducts daily visual inspections of the hoist system; and

(iii) Inspect and test the hoist system as specified by 29 CFR 1926.552(c)(15).

(b) The employers must comply with the accident prevention requirements of 29 CFR 1926.20(b)(3).

16. Welding

(a) The employers must use only qualified welders to weld components of the hoisting system.

(b) The employers must ensure that the qualified welders:

(i) Are familiar with the weld grades, types, and materials specified in the design of the system; and

(ii) Perform the welding tasks in accordance with 29 CFR 1926, subpart J (''Welding and Cutting'').

APPENDIX A

Nonmandatory Conditions When Performing Chimney Construction Using Hoist Systems

OSHA strongly encourages the employers to implement the following additional conditions under this order:

1. *Fall hazards.* The employers should install attachment points inside personnel cages for securing fall-arrest systems, and ensure that workers using personnel cages secure their fall-arrest systems to these attachment points.

2. *Shearing hazards.* The employers should:

(a) Provide workers who use personnel platforms or boatswain's chairs with instruction on the shearing hazards posed by the hoist system (*e.g.*, work platforms, scaffolds), and the need to keep their limbs or other body parts clear of these hazards during hoisting operations;

(b) Provide the instruction on shearing hazards:

(i) Before a worker uses a personnel platform or boatswain's chair at the worksite; and

(ii) Periodically, and as necessary, thereafter, including whenever a worker demonstrates a lack of knowledge about the hazard or how to avoid the hazard, a modification occurs to an existing shearing hazard, or a new shearing hazard develops at the worksite; and

(c) Attach a readily visible warning to each personnel platform and boatswain's chair notifying workers, in a language the workers understand, of potential shearing hazards they may encounter during hoisting operations, and that uses the following (or equivalent) wording:

(i) For personnel platforms: ''Warning—To avoid serious injury, keep your hands, arms, feet, legs, and other parts of your body inside this platform while it is in motion''; and

(ii) For boatswain's chairs: ''Warning—To avoid serious injury, do not extend your hands, arms, feet, legs, or other parts of your body from the side or to the front of this chair while it is in motion.''

3. *Safety zone.* The employers should:

(a) Establish a clearly designated safety zone around the bottom landing of the hoist system; and

(b) Prohibit any worker from entering the safety zone except to access a personnel- or material-transport device, and then only when the device is at the bottom landing and not in operation (*i.e.*, when the drive components of the hoist machine are disengaged and the braking mechanism is properly applied).

4. *OSHA notification.* The employers should:

(a) At least 15 calendar days prior to commencing any chimney construction operation using the conditions specified herein, notify the OSHA Area Office nearest to the worksite, or the appropriate State-Plan Office, of the operation, including the location of the operation and the date the operation will commence;

(b) Inform OSHA national headquarters as soon as it has knowledge that it will:

(i) Cease to do business; or

(ii) Transfer the activities covered by this permanent variance to a successor company.

IX. Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC directed the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 5–2007 (72 FR 31160), and 29 CFR part 1905.

Signed at Washington, DC, on August 11th, 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–19741 Filed 8–17–09; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[OSHA–2007–0004 (Formerly V–06–01)]

Gibraltar Chimney International, LLC, Hoffmann, Inc., and Kiewit Power Constructors Co.: Grant of a Permanent Variance

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of a grant of a permanent variance.

SUMMARY: This notice announces the grant of a permanent variance to

Gibraltar Chimney International, LLC, Hoffmann, Inc., and Kiewit Power Constructors Co. (''the employers''). The permanent variance addresses the provision that regulates the tackle used for boatswain's chairs (29 CFR 1926.452 (o)(3)), as well as the provisions specified for personnel hoists by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. Instead of complying with these provisions, the employers must comply with a number of alternative conditions listed in this grant; these alternative conditions regulate hoist systems used during inside or outside chimney construction to raise or lower workers in personnel cages, personnel platforms, and boatswain's chairs between the bottom landing of a chimney and an elevated work location. Accordingly, OSHA finds that these alternative conditions protect workers at least as well as the requirements specified by 29 CFR 1926.452(o)(3) and 1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16). This permanent variance applies in Federal OSHA enforcement jurisdictions, and in those States with OSHA-approved State-Plans covering private-sector employers that have identical standards and have agreed to the terms of the variance.

DATES: The effective date of the permanent variance is August 18, 2009.

FOR FURTHER INFORMATION CONTACT: For information about this notice contact Ms. MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, Room N–3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2110; fax (202) 693–1644. For electronic copies of this notice, contact the Agency on its Web page at *http://www.osha.gov*, and select ''**Federal Register**,'' ''Date of Publication,'' and then ''2009.''

Additional information also is available from the following OSHA Regional Offices:

U.S. Department of Labor, OSHA, JFK Federal Building, Room E340, Boston, MA 02203; *telephone:* (617) 565–9860; *fax:* (617) 565–9827.

U.S. Department of Labor, OSHA, 201 Varick Street, Room 670, New York, NY 10014; *telephone:* (212) 337–2378; *fax:* (212) 337–2371.

U.S. Department of Labor, OSHA, the Curtis Center, Suite 740 West, 170 South Independence Mall West, Philadelphia, PA 19106–3309; *telephone:* (215) 861–4900; *fax:* (215) 861–4904.

U.S. Department of Labor, OSHA, Atlanta Federal Center, 61 Forsyth Street, SW., Room 6T50, Atlanta, GA 30303; *telephone:* (404) 562–2300; *fax:* (404) 562–2295.

U.S. Department of Labor, OSHA, 230 South Dearborn Street, Room 3244, Chicago, IL 60604; *telephone:* (312) 353–2220; *fax:* (312) 353–7774.

U.S. Department of Labor, OSHA, Two Pershing Square Building, 2300 Main Street, Suite 1010, Kansas City, MO 64108–2416; *telephone:* (816) 283–8745; *fax:* (816) 283–0547.

U.S. Department of Labor, OSHA, 525 Griffin Street, Suite 602, Dallas, TX 75202; *telephone:* (972) 850–4145; *fax:* (972) 850–4149.

U.S. Department of Labor, OSHA, 1999 Broadway, Suite 1690, Denver, CO 80202; *telephone:* (720) 264–6550; *fax:* (720) 264–6585.

U.S. Department of Labor, OSHA, 90 7th Street, Suite 18100, San Francisco, CA 94103; *telephone:* (415) 625–2547; *fax:* (415) 625–2534.

U.S. Department of Labor, OSHA, 1111 Third Avenue, Suite 715, Seattle, WA 98101–3212; *telephone:* (206) 553–5930; *fax:* (206) 553–6499.

SUPPLEMENTARY INFORMATION:

I. Background

In the past 35 years, a number of chimney construction companies have demonstrated to OSHA that several personnel-hoist requirements (*i.e.*, paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552), as well as the tackle requirements for boatswain's chairs (*i.e.*, paragraph (o)(3) of 29 CFR 1926.452), result in access problems that pose a serious danger to their workers. These companies requested permanent variances from these requirements, and proposed alternative equipment and procedures to protect workers while being transported to and from their elevated worksites during chimney construction and repair. The Agency subsequently granted these companies permanent variances based on the proposed alternatives (*see* 38 FR 8545 (April 3, 1973), 44 FR 51352 (August 31, 1979), 50 FR 20145 (May 14, 1985), 50 FR 40627 (October 4, 1985), 52 FR 22552 (June 12, 1987), 68 FR 52961 (September 8, 2003), 70 FR 72659 (December 6, 2005), and 71 FR 10557 (March 1, 2006)).[1]

Gibraltar Chimney International, LLC, Hoffmann, Inc., and Kiewit Power Constructors Co. (formerly, Kiewit Industrial Co.) applied for a permanent variance from the same personnel-hoist and boatswain's-chair requirements as the previous companies, and proposed as an alternative to these requirements the same equipment and procedures approved by OSHA in the earlier variances. The Agency published their variance applications in the **Federal Register** on February 8, 2007 (72 FR 6002).

Gibraltar Chimney International, LLC, Hoffmann, Inc., and Kiewit Power Constructors Co. (''the employers'') construct, remodel, repair, maintain, inspect, and demolish tall chimneys made of reinforced concrete, brick, and steel. This work, which occurs throughout the United States, requires the employers to transport workers and construction material to and from elevated work platforms and scaffolds located, respectively, inside and outside tapered chimneys. While tapering contributes to the stability of a chimney, it necessitates frequent relocation of, and adjustments to, the work platforms and scaffolds so that they will fit the decreasing circumference of the chimney as construction progresses upwards.

To transport workers to various heights inside and outside a chimney, the employers proposed in their variance applications to use a hoist system that lifts and lowers personnel-transport devices that include personnel cages, personnel platforms, or boatswain's chairs. In this regard, the employers proposed to use personnel cages, personnel platforms, or boatswain's chairs solely to transport workers with the tools and materials necessary to do their work, and not to transport only materials or tools on these devices in the absence of workers. In addition, the employers proposed to attach a hopper or concrete bucket to the hoist system to raise or lower material inside or outside a chimney.

The employers also proposed to use a hoist engine, located and controlled outside the chimney, to power the hoist system. The proposed system consisted of a wire rope that: spools off a winding drum (also known as the hoist drum or rope drum) into the interior of the chimney; passes to a footblock that redirects the rope from the horizontal to the vertical planes; goes from the footblock through the overhead sheaves above the elevated platform; and finally drops to the bottom landing of the chimney where it connects to a personnel- or material-transport device. The cathead, which is a superstructure at the top of the system, supports the overhead sheaves. The overhead

[1] Zurn Industries, Inc. received two permanent variances from OSHA. The first variance, granted on May 14, 1985 (50 FR 20145), addressed the boatswain's-chair provision (then in paragraph (l)(5) of 29 CFR 1926.451), as well as the hoist-platform requirements of paragraphs (c)(1), (c)(2), (c)(3), and (c)(14)(i) of 29 CFR 1926.552. The second variance, granted on June 12, 1987 (52 FR 22552), includes these same paragraphs, as well as paragraphs (c)(4), (c)(8), (c)(13), and (c)(16) of 29 CFR 1926.552.

sheaves (and the vertical span of the hoist system) move upward with the system as chimney construction progresses. Two guide cables, suspended from the cathead, eliminate swaying and rotation of the load. If the hoist rope breaks, safety clamps activate and grip the guide cables to prevent the load from falling. The employers proposed to use a headache ball, located on the hoist rope directly above the load, to counterbalance the rope's weight between the cathead sheaves and the footblock.

Additional conditions that the employers proposed to follow to improve worker safety included:

- Attaching the wire rope to the personnel cage using a keyed-screwpin shackle or positive-locking link;
- Adding limit switches to the hoist system to prevent overtravel by the personnel- or material-transport devices;
- Providing the safety factors and other precautions required for personnel hoists specified by the pertinent provisions of 29 CFR 1926.552(c), including canopies and shields to protect workers located in a personnel cage from material that may fall during hoisting and other overhead activities;
- Providing falling object protection for scaffold platforms as specified by 29 CFR 1926.451(h)(1);
- Conducting tests and inspections of the hoist system as required by 29 CFR 1926.20(b)(2) and 1926.552(c)(15);
- Establishing an accident prevention program that conforms to 29 CFR 1926.20(b)(3);
- Ensuring that workers who use a personnel platform or boatswain's chair wear full-body harnesses and lanyards, and that the lanyards are attached to the lifelines during the entire period of vertical transit; and
- Securing the lifelines (used with a personnel platform or boatswain's chair) to the rigging at the top of the chimney and to a weight at the bottom of the chimney to provide maximum stability to the lifelines.

II. Proposed Variance From 29 CFR 1926.452(o)(3)

The employers noted in their variance request that it is necessary, on occasion, to use a boatswain's chair to transport workers to and from a bracket scaffold on the outside of an existing chimney during flue installation or repair work, or to transport them to and from an elevated scaffold located inside a chimney that has a small or tapering diameter. Paragraph (o)(3) of 29 CFR 1926.452, which regulates the tackle used to rig a boatswain's chair, states that this tackle must ''consist of correct size ball bearings or bushed blocks containing safety hooks and properly 'eye-spliced' minimum five-eighth (5/8) inch diameter first-grade manila rope [or equivalent rope].''

The primary purpose of this paragraph is to allow a worker to safely control the ascent, descent, and stopping locations of the boatswain's chair. However, the employers stated in their variance request that, because of space limitations, the required tackle is difficult or impossible to operate on some chimneys that are over 200 feet tall. Therefore, as an alternative to complying with the tackle requirements specified by 29 CFR 1926.452(o)(3), the employers proposed to use the hoisting system described above in section I (''Background'') of this notice to raise or lower workers in a personnel cage to work locations both inside and outside a chimney. In addition, the employers proposed to use a personnel cage for this purpose to the extent that adequate space is available, and to use a personnel platform when using a personnel cage was infeasible because of limited space. When available space makes using a personnel platform infeasible, the employers proposed to use a boatswain's chair to lift workers to work locations. The proposed variance limited use of the boatswain's chair to elevations above the last work location that the personnel platform can reach; under these conditions, the employers proposed to attach the boatswain's chair directly to the hoisting cable only when the structural arrangement precludes the safe use of the block and tackle required by 29 CFR 1926.452(o)(3).

III. Proposed Variance From 29 CFR 1926.552(c)

Paragraph (c) of 29 CFR 1926.552 specifies the requirements for enclosed hoisting systems used to transport workers from one elevation to another. This paragraph ensures that employers transport workers safely to and from elevated work platforms by mechanical means during the construction, alteration, repair, maintenance, or demolition of structures such as chimneys. However, this standard does not provide specific safety requirements for hoisting workers to and from elevated work platforms and scaffolds in tapered chimneys; the tapered design requires frequent relocation of, and adjustment to, the work platforms and scaffolds. The space in a small-diameter or tapered chimney is not large enough or configured so that it can accommodate an enclosed hoist tower. Moreover, using an enclosed hoist tower for outside operations exposes workers to additional fall hazards because they need to install extra bridging and bracing to support a walkway between the hoist tower and the tapered chimney.

Paragraph (c)(1) of 29 CFR 1926.552 requires the employers to enclose hoist towers located outside a chimney on the side or sides used for entrance to, and exit from, the chimney; these enclosures must extend the full height of the hoist tower. The employers asserted in their proposed variance that it is impractical and hazardous to locate a hoist tower outside tapered chimneys because it becomes increasingly difficult, as a chimney rises, to erect, guy, and brace a hoist tower; under these conditions, access from the hoist tower to the chimney or to the movable scaffolds used in constructing the chimney exposes workers to a serious fall hazard. Additionally, they noted that the requirement to extend the enclosures 10 feet above the outside scaffolds often exposes the workers involved in building these extensions to dangerous wind conditions.

Paragraph (c)(2) of 29 CFR 1926.552 requires that employers enclose all four sides of a hoist tower even when the tower is located inside a chimney; the enclosure must extend the full height of the tower. In the proposed variance, the employers contended that it is hazardous for workers to erect and brace a hoist tower inside a chimney, especially small-diameter or tapered chimneys or chimneys with sublevels, because these structures have limited space and cannot accommodate hoist towers; space limitations result from chimney design (*e.g.*, tapering), as well as reinforced steel projecting into the chimney from formwork that is near the work location.

As an alternative to complying with the hoist-tower requirements of 29 CFR 1926.552(c)(1) and (c)(2), the employers proposed to use the hoist system discussed in section I (''Background'') of this notice to transport workers to and from work locations inside and outside chimneys. They claimed that this hoist system would make it unnecessary for them to comply with other provisions of 29 CFR 1926.552(c) that specify requirements for hoist towers, including:

- (c)(3)—Anchoring the hoist tower to a structure;
- (c)(4)—Hoistway doors or gates;
- (c)(8)—Electrically interlocking entrance doors or gates that prevent hoist movement when the doors or gates are open;
- (c)(13)—Emergency stop switch located in the car;
- (c)(14)(i)—Using a minimum of two wire ropes for drum-type hoisting; and

• (c)(16)—Construction specifications for personnel hoists, including materials, assembly, structural integrity, and safety devices.

The employers asserted that the proposed hoisting system protected workers at least as effectively as the personnel-hoist requirements of 29 CFR 1926.552(c). The following section of this preamble reviews the comments received on the employers' proposed variance.

IV. Comments on the Proposed Variance

OSHA received no comments on the proposed variance, including no comments from State-Plan States and Territories.

V. Multi-State Variance

The variance applications stated that the employers perform chimney work in a number of geographic locations in the United States, some of which could include locations in one or more of the States and Territories that operate OSHA-approved safety and health programs under Section 18 of the Occupational Safety and Health Act of 1970 (''State-Plan States and Territories''; *see* 29 U.S.C. 651 *et seq.*). State-Plan States and Territories have primary enforcement responsibility over the work performed in those States and Territories. Under the provisions of 29 CFR 1952.9 (''Variances affecting multi-state employers'') and 29 CFR 1905.14(b)(3) (''Actions on applications''), a permanent variance granted by the Agency becomes effective in State-Plan States and Territories as an authoritative interpretation of the applicants' compliance obligation when: (1) The relevant standards are the same as the Federal OSHA standards from which the applicants are seeking the permanent variance; and (2) the State-Plan State or Territory does not object to the terms of the variance application.

As noted in the previous section of this notice (Section IV (''Comments on the Proposed Variance'')), OSHA received no comments on the variance application published in the **Federal Register** from any State-Plan State or Territory. However, several State-Plan States and Territories commented on earlier variance applications published in the **Federal Register** involving the same standards and submitted by other employers engaged in chimney construction and repair; OSHA is relying on these previous comments to determine the position of these State-Plan States and Territories on the variance applications submitted by the present employers.[2] The remaining paragraphs in this section provide a summary of the positions taken by the State-Plan States and Territories on the proposed alternative conditions.

The following thirteen State-Plan States and one Territory have standards identical to the Federal OSHA standards and agreed to accept the alternative conditions: Alaska, Arizona, Indiana, Maryland, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Vermont, Virginia, and Wyoming. Of the remaining 12 States and Territories with OSHA-approved State plans, three of the States and one Territory (Connecticut, New Jersey, New York, and the Virgin Islands) cover only public sector workers and have no authority over the private sector workers addressed in this variance application (*i.e.,* that authority continues to reside with Federal OSHA).

Four States (Kentucky, Michigan, South Carolina, and Utah) accepted the proposed alternative when specific additional requirements are fulfilled. Kentucky noted that, while it agreed with the terms of the variance, Kentucky statutory law requires affected employers to apply to the State for a State variance. Michigan agreed to the alternative conditions, but noted that its standards are not identical to the OSHA standards covered by the variance application. Therefore, Michigan cautioned that employers electing to use the variance in that State must comply with several provisions in the Michigan standards that are not addressed in the OSHA standard. South Carolina indicated that it would accept the alternative conditions, but noted that, for the grant of such a variance to be accepted by the South Carolina Commissioner of Labor, the employers must file the grant at the Commissioner's office in Columbia, South Carolina. Utah agreed to accept the Federal variance, but requires the employers to contact the Occupational Safety and Health Division, Labor Commission of Utah, regarding a procedural formality that must be completed before implementing the variance in that State.

California, Hawaii, Iowa, and Washington either had different requirements in their standards or declined to accept the terms of the variance. Therefore, the employers must apply separately for a permanent variance from these four States.

Based on the responses previously received from State-Plan States and Territories, the permanent Federal OSHA variance will be effective in the following thirteen State-Plan States and one Territory: Alaska, Arizona, Indiana, Maryland, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Virginia, Vermont, and Wyoming; and in four additional states, Kentucky, Michigan, South Carolina, and Utah, when the employers meet specific additional requirements. However, this permanent variance does not apply in California, Hawaii, Iowa, and Washington State. As stated earlier, in the three States and one Territory (Connecticut, New Jersey, New York, and the Virgin Islands) that have State-Plan programs that cover only public sector workers, authority over the employers under the permanent variance continues to reside with Federal OSHA.

VI. Nonmandatory Conditions Added to the Permanent Variance

After publishing the variance application of Gibraltar Chimney International, LLC, Hoffmann, Inc., and Kiewit Power Constructors Co. in the **Federal Register**, OSHA received additional variance applications from chimney construction companies. The Agency subsequently combined these applications and published them in the **Federal Register** (*see* 74 FR 4237) after adding several conditions that it believes will increase worker protection at little additional cost or burden to the employers. These added conditions include a requirement for employers to install attachment points inside personnel cages for securing fall arrest systems, and to ensure that workers secure their fall arrest systems to these attachment points when using a personnel cage. The Agency believes this additional condition will protect workers from falling out of a cage in the event the door of the cage opens inadvertently during lifting operations.

OSHA also added other conditions that it believes are necessary to protect workers from shearing or struck-by hazards associated with using hoist systems in chimney construction. Workers encounter these hazards when using personnel platforms or boatswain's chairs to transport them to or from an elevated jobsite. During transport, these personnel transport devices pass near structures, including work platforms and scaffolds, that could crush or inflict other serious injury on a hand, arm, foot, leg, or other body part that extends beyond the confines of the

[2] *See* 68 FR 52961 (Oak Park Chimney Corp. and American Boiler & Chimney Co.), 70 FR 72659 (International Chimney Corporation, Karrena International, LLC, and Matrix Service Industrial Contractors, Inc.), and 71 FR 10557 (Commonwealth Dynamics, Inc., Mid-Atlantic Boiler & Chimney, Inc., and R and P Industrial Chimney Co., Inc.).

personnel transport device. To prevent these injuries, OSHA added a condition to the variance applications that would require employers to instruct workers who use personnel platforms or boatswain's chairs to recognize the shearing and struck-by hazards associated with personnel-transport operations, and how to avoid these hazards. Additionally, the condition would require employers to attach to the personnel platforms and boatswain's chairs, a readily visible warning of the hazards; this warning will supplement and reinforce the hazard training by reminding workers of the hazards and how to avoid them.

To address another struck-by hazard, OSHA added a condition that would require employers to establish a safety zone around the bottom landing where workers access personnel- and material-transport devices. The employers would have to ensure that workers enter the safety zone only to access a transport device that is in the area circumscribed by the safety zone, and only when the hoist system is not in operation. OSHA believes that this condition will prevent a transport device that is descending from an elevated jobsite from striking a worker who is in or near the bottom-landing area and is not aware of the descending device. During descent, it also is difficult for workers in or on these devices to detect a worker beneath them. Therefore, it would be necessary for the employers to establish a safety zone and ensure that workers only enter the safety zone when a transport device is at the bottom landing and not in operation (*i.e.,* the drive components of the hoist system are disengaged and the braking mechanism is properly applied).

OSHA also added another condition that would require employers to notify (1) the nearest OSHA Area Office, or appropriate State-Plan Office, at least 15 days before commencing chimney construction operations covered by the variance, and (2) OSHA national headquarters as soon as an employer knows that it will cease doing business or transfers the activities covered by the variance to another company. These administrative requirements would enable OSHA to more easily enforce, and determine the status of, the variance than is presently the case. Currently, OSHA has little or no information about chimney construction activities conducted under a variance, making it difficult for it to assess compliance with the conditions specified under the variance. Additionally, OSHA finds that construction companies cease operations or transfer chimney construction assets to successor companies without informing the Agency that the variance is no longer needed, or requesting that OSHA reassign the variance to the successor company. The Agency believes that these notification requirements will improve administrative oversight of the variance program, thereby enhancing worker safety and reducing its administrative burden.

OSHA specifies these additional conditions in Appendix A of the order (*see* Section VIII (''Order''), below). As the employers, workers, and other members of the regulated community did not have an opportunity to comment on these conditions, OSHA considers these conditions to be nonmandatory, and not enforceable under the order. However, as noted in the previous paragraphs of this section, OSHA believes that these conditions will increase the protection afforded to workers under the permanent variance, and will do so at little additional cost or burden to employers. Therefore, OSHA strongly encourages the employers to implement these additional conditions. In this regard, OSHA will propose in the near future to revise permanent variances issued earlier (*i.e.,* prior to 2009) for chimney construction to include these additional conditions.

VII. Decision

Gibraltar Chimney International, LLC, Hoffmann, Inc., and Kiewit Power Constructors Co. seek a permanent variance from the provision that regulates the tackle used for boatswain's chairs (29 CFR 1926.452(o)(3)), as well as the provisions specified for personnel hoists by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. Paragraph (o)(3) of 29 CFR 1926.452 states that the tackle used for boatswain's chairs must ''consist of correct size ball bearings or bushed blocks containing safety hooks and properly 'eye-spliced' minimum five-eighth (5/8) inch diameter first-grade manila rope [or equivalent rope].'' The primary purpose of this provision is to allow a worker to safely control the ascent, descent, and stopping locations of the boatswain's chair. The proposed alternative to these requirements allows the employer to use a boatswain's chair to lift workers to work locations inside and outside a chimney when both a personnel cage and a personnel platform are infeasible. The employers proposed to attach the boatswain's chair to the hoisting system described as an alternative for paragraph (c) of 29 CFR 1926.552.

Paragraph (c) of 29 CFR 1926.552 specifies the requirements for enclosed hoisting systems used to transport personnel from one elevation to another. This paragraph ensures that employers transport workers safely to and from elevated work platforms by mechanical means during construction work involving structures such as chimneys. In this regard, paragraph (c)(1) of 29 CFR 1926.552 requires employers to enclose hoist towers located outside a chimney on the side or sides used for entrance to, and exit from, the structure; these enclosures must extend the full height of the hoist tower. Under the requirements of paragraph (c)(2) of 29 CFR 1926.552, employers must enclose all four sides of a hoist tower located inside a chimney; these enclosures also must extend the full height of the tower.

As an alternative to complying with the hoist tower requirements of 29 CFR 1926.552(c)(1) and (c)(2), the employers proposed to use a hoist system to transport workers to and from elevated work locations inside and outside chimneys. The proposed hoist system includes a hoist machine, cage, safety cables, and safety measures such as limit switches to prevent overrun of the cage at the top and bottom landings, and safety clamps that grip the safety cables if the main hoist line fails. To transport workers to and from elevated work locations, the employers proposed to attach a personnel cage to the hoist system. However, when they can demonstrate that adequate space is not available for the cage, they may use a personnel platform above the last worksite that the cage can reach. Further, when the employers show that space limitations make it infeasible to use a work platform for transporting workers, they have proposed to use a boatswain's chair above the last worksite serviced by the personnel platform. Using the proposed hoist system as an alternative to the hoist tower requirements of 29 CFR 1926.552(c)(1) and (c)(2) eliminates the need to comply with the other provisions of 29 CFR 1926.552(c) that specify requirements for hoist towers.

Accordingly, the employers have requested a permanent variance from these and related provisions (*i.e.,* paragraphs (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16)).

Under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), and based on the record discussed above, the Agency finds that when the employers comply with the conditions of the following order, the working conditions of their workers will be at least as safe and healthful as if the employers complied with the working conditions specified by paragraph (o)(3) of 29 CFR 1926.452, and paragraphs (c)(1) through (c)(4),

(c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. This decision is applicable in all States under Federal OSHA enforcement jurisdiction, and in the 14 State-Plan States with standards identical to the Federal standards (Alaska, Arizona, Indiana, Maryland, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Virginia, Vermont, and Wyoming). In Kentucky, Michigan, South Carolina and Utah, the employers must meet additional conditions before this variance will apply in those States. This decision does not apply in California, Hawaii, Iowa, and Washington.

VIII. Order

OSHA issues this order authorizing Gibraltar Chimney International, LLC, Hoffmann, Inc., and Kiewit Power Constructors Co. (''the employers'') to comply with the following conditions instead of complying with paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. This order applies in Federal OSHA enforcement jurisdictions, and in those States with OSHA-approved State plans that have identical standards and have agreed to the terms of the variance.

1. Scope of the Permanent Variance

(a) This permanent variance applies only to tapered chimneys when the employers use a hoist system during inside or outside chimney construction to raise or lower their workers between the bottom landing of a chimney and an elevated work location on the inside or outside surface of the chimney.

(b) When using a hoist system as specified in this permanent variance, the employers must:

(i) Use the personnel cages, personnel platforms, or boatswain's chairs raised and lowered by the hoist system solely to transport workers with the tools and materials necessary to do their work; and

(ii) Attach a hopper or concrete bucket to the hoist system to raise and lower all other materials and tools inside or outside a chimney.

(c) Except for the requirements specified by 29 CFR 1926.452 (o)(3) and 1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16), the employers must comply fully with all other applicable provisions of 29 CFR parts 1910 and 1926.

2. Replacing a Personnel Cage With a Personnel Platform or a Boatswain's Chair

(a) *Personnel platform.* When the employers demonstrate that available space makes a personnel cage for transporting workers infeasible, they may replace the personnel cage with a personnel platform when they limit use of the personnel platform to elevations above the last work location that the personnel cage can reach.

(b) *Boatswain's chair.* Employers must:

(i) Before using a boatswain's chair, demonstrate that available space makes it infeasible to use a personnel platform for transporting workers;

(ii) Limit use of a boatswain's chair to elevations above the last work location that the personnel platform can reach; and

(iii) Use a boatswain's chair in accordance with tackle requirements specified by 29 CFR 1926.452(o)(3), unless they can demonstrate that the structural arrangement of the chimney precludes such use.

3. Qualified Competent Person

(a) The employers must:

(i) Provide a qualified competent person, as specified in paragraphs (f) and (m) of 29 CFR 1926.32, who is responsible for ensuring that the design, maintenance, and inspection of the hoist system comply with the conditions of this grant and with the appropriate requirements of 29 CFR part 1926 (''Safety and Health Regulations for Construction''); and

(ii) Ensure that the qualified competent person is present at ground level to assist in an emergency whenever the hoist system is raising or lowering workers.

(b) The employers must use a qualified competent person to design and maintain the cathead described under Condition 8 (''Cathead and Sheave''), below.

4. Hoist Machine

(a) *Type of hoist.* The employers must designate the hoist machine as a portable personnel hoist.

(b) *Raising or lowering a transport.* The employers must ensure that:

(i) The hoist machine includes a base-mounted drum hoist designed to control line speed; and

(ii) Whenever they raise or lower a personnel or material hoist (*e.g.,* a personnel cage, personnel platform, boatswain's chair, hopper, concrete bucket) using the hoist system:

(A) The drive components are engaged continuously when an empty or occupied transport is being lowered (*i.e.,* no ''freewheeling'');

(B) The drive system is interconnected, on a continuous basis, through a torque converter, mechanical coupling, or an equivalent coupling (*e.g.,* electronic controller, fluid clutches, hydraulic drives).

(C) The braking mechanism is applied automatically when the transmission is in the neutral position and a forward-reverse coupling or shifting transmission is being used; and

(D) No belts are used between the power source and the winding drum.

(c) *Power source.* The employers must power the hoist machine by an air, electric, hydraulic, or internal combustion drive mechanism.

(d) *Constant-pressure control switch.* The employers must:

(i) Equip the hoist machine with a hand- or foot-operated constant-pressure control switch (*i.e.,* a ''deadman control switch'') that stops the hoist immediately upon release; and

(ii) Protect the control switch to prevent it from activating if the hoist machine is struck by a falling or moving object.

(e) *Line-speed indicator.* The employers must:

(i) Equip the hoist machine with an operating line-speed indicator maintained in good working order; and

(ii) Ensure that the line-speed indicator is in clear view of the hoist operator during hoisting operations.

(f) *Braking systems.* The employers must equip the hoist machine with two (2) independent braking systems (*i.e.,* one automatic and one manual) located on the winding side of the clutch or couplings, with each braking system being capable of stopping and holding 150 percent of the maximum rated load.

(g) *Slack-rope switch.* The employers must equip the hoist machine with a slack-rope switch to prevent rotation of the winding drum under slack-rope conditions.

(h) *Frame.* The employers must ensure that the frame of the hoist machine is a self-supporting, rigid, welded steel structure, and that holding brackets for anchor lines and legs for anchor bolts are integral components of the frame.

(i) *Stability.* The employers must secure hoist machines in position to prevent movement, shifting, or dislodgement.

(j) *Location.* The employers must:

(i) Locate the hoist machine far enough from the footblock to obtain the correct fleet angle for proper spooling of the cable on the drum; and

(ii) Ensure that the fleet angle remains between one-half degree (½°) and one and one-half degrees (1½°) for smooth drums, and between one-half degree (½°) and two degrees (2°) for grooved

drums, with the lead sheave centered on the drum.[1]

(k) *Drum and flange diameter.* The employers must:

(i) Provide a winding drum for the hoist that is at least 30 times the diameter of the rope used for hoisting; and

(ii) Ensure that the winding drum has a flange diameter that is at least one and one-half (1½) times the diameter of the winding drum.

(l) *Spooling of the rope.* The employers must *never* spool the rope closer than two (2) inches (5.1 cm) from the outer edge of the winding drum flange.

(m) *Electrical system.* The employers must ensure that all electrical equipment is weatherproof.

(n) *Limit switches.* The employers must equip the hoist system with limit switches and related equipment that automatically prevent overtravel of a personnel cage, personnel platform, boatswain's chair, or material-transport device at the top of the supporting structure and at the bottom of the hoistway or lowest landing level.

5. Methods of Operation

(a) *Worker qualifications and training.* The employers must:

(i) Ensure that only trained and experienced workers, who are knowledgeable of hoist-system operations, control the hoist machine; and

(ii) Provide instruction, periodically and as necessary, on how to operate the hoist system, to each worker who uses a personnel cage for transportation.

(b) *Speed limitations.* The employers must *not* operate the hoist at a speed in excess of:

(i) Two hundred and fifty (250) feet (76.9 m) per minute when a personnel cage is being used to transport workers;

(ii) One hundred (100) feet (30.5 m) per minute when a personnel platform or boatswain's chair is being used to transport workers; or

(iii) A line speed that is consistent with the design limitations of the system when only material is being hoisted.

(c) *Communication.* The employers must:

(i) Use a voice-mediated intercommunication system to maintain communication between the hoist operator and the workers located in or on a moving personnel cage, personnel platform, or boatswain's chair;

(ii) Stop hoisting if, for any reason, the communication system fails to operate effectively; and

(iii) Resume hoisting only when the site superintendent determines that it is safe to do so.

6. Hoist Rope

(a) *Grade.* The employers must use a wire rope for the hoist system (*i.e.,* ''hoist rope'') that consists of extra-improved plow steel, an equivalent grade of non-rotating rope, or a regular lay rope with a suitable swivel mechanism.

(b) *Safety factor.* The employers must maintain a safety factor of at least eight (8) times the safe workload throughout the entire length of hoist rope.

(c) *Size.* The employers must use a hoist rope that is at least one-half (½) inch (1.3 cm) in diameter.

(d) *Inspection, removal, and replacement.* The employers must:

(i) Thoroughly inspect the hoist rope before the start of each job and on completing a new setup;

(ii) Maintain the proper diameter-to-diameter ratios between the hoist rope and the footblock and the sheave by inspecting the wire rope regularly (*see* Conditions 7(c) and 8(d), below); and

(iii) Remove and replace the wire rope with new wire rope when any of the conditions specified by 29 CFR 1926.552(a)(3) occurs.

(e) *Attachments.* The employers must attach the rope to a personnel cage, personnel platform, or boatswain's chair with a keyed-screwpin shackle or positive-locking link.

(f) *Wire-rope fastenings.* When the employers use clip fastenings (*e.g.,* U-bolt wire-rope clips) with wire ropes, they must:

(i) Use Table H–20 of 29 CFR 1926.251 to determine the number and spacing of clips;

(ii) Use at least three (3) drop-forged clips at each fastening;

(iii) Install the clips with the ''U'' of the clips on the dead end of the rope; and

(iv) Space the clips so that the distance between them is six (6) times the diameter of the rope.

7. Footblock

(a) *Type of block.* The employers must use a footblock:

(i) Consisting of construction-type blocks of solid single-piece bail with a safety factor that is at least four (4) times the safe workload, or an equivalent block with roller bearings;

(ii) Designed for the applied loading, size, and type of wire rope used for hoisting;

(iii) Designed with a guard that contains the wire rope within the sheave groove;

(iv) Bolted rigidly to the base; and

(v) Designed and installed so that it turns the moving wire rope to and from the horizontal or vertical direction as required by the direction of rope travel.

(b) *Directional change.* The employers must ensure that the angle of change in the hoist rope from the horizontal to the vertical direction at the footblock is approximately 90°.

(c) *Diameter.* The employers must ensure that the line diameter of the footblock is at least 24 times the diameter of the hoist rope.

8. Cathead and Sheave

(a) *Support.* The employers must use a cathead (*i.e.,* ''overhead support'') that consists of a wide-flange beam, or two (2) steel-channel sections securely bolted back-to-back to prevent spreading.

(b) *Installation.* The employers must ensure that:

(i) All sheaves revolve on shafts that rotate on bearings; and

(ii) The bearings are mounted securely to maintain the proper bearing position at all times.

(c) *Rope guides.* The employers must provide each sheave with appropriate rope guides to prevent the hoist rope from leaving the sheave grooves when the rope vibrates or swings abnormally.

(d) *Diameter.* The employers must use a sheave with a diameter that is at least 24 times the diameter of the hoist rope.

9. Guide Ropes

(a) *Number and construction.* The employers must affix two (2) guide ropes by swivels to the cathead. The guide ropes must:

(i) Consist of steel safety cables not less than one-half (½) inch (1.3 cm) in diameter; and

(ii) Be free of damage or defect at all times.

(b) *Guide rope fastening and alignment tension.* The employers must fasten one end of each guide rope securely to the overhead support, with appropriate tension applied at the foundation.

(c) *Height.* The employers must rig the guide ropes along the entire height of the hoist-machine structure.

10. Personnel Cage

(a) *Construction.* A personnel cage must be of steel frame construction and capable of supporting a load that is four (4) times its maximum rated load

[1] This variance adopts the definition of, and specifications for, fleet angle from *Cranes and Derricks*, H. I. Shapiro, *et al.* (eds.); New York: McGraw-Hill; 3rd ed., 1999, page 592. Accordingly, the fleet angle is ''[t]he angle the rope leading onto a [winding] drum makes with the line perpendicular to the drum rotating axis when the lead rope is making a wrap against the flange.''

capacity. The employers also must ensure that the personnel cage has:

(i) A top and sides that are permanently enclosed (except for the entrance and exit);

(ii) A floor securely fastened in place;

(iii) Walls that consist of 14-gauge, one-half (½) inch (1.3 cm) expanded metal mesh, or an equivalent material;

(iv) Walls that cover the full height of the personnel cage between the floor and the overhead covering;

(v) A sloped roof constructed of one-eighth (⅛) inch (0.3 cm) aluminum, or an equivalent material; and

(vi) Safe handholds (*e.g.,* rope grips—but *not* rails or hard protrusions [2]) that accommodate each occupant.

(b) *Overhead weight.* A personnel cage must have an overhead weight (*e.g.,* a headache ball of appropriate weight) to compensate for the weight of the hoist rope between the cathead and the footblock. In addition, the employers must:

(i) Ensure that the overhead weight is capable of preventing line run; and

(ii) Use a means to restrain the movement of the overhead weight so that the weight does *not* interfere with safe personnel hoisting.

(c) *Gate.* The personnel cage must have a gate that:

(i) Guards the full height of the entrance opening; and

(ii) Has a functioning mechanical lock that prevents accidental opening.

(d) *Operating procedures.* The employers must post the procedures for operating the personnel cage conspicuously at the hoist operator's station.

(e) *Capacity.* The employers must:

(i) Hoist no more than four (4) occupants in the cage at any one time; and

(ii) Ensure that the rated load capacity of the cage is at least 250 pounds (113.4 kg) for each occupant so hoisted.

(f) *Worker notification.* The employers must post a sign in each personnel cage notifying workers of the following conditions:

(i) The standard rated load, as determined by the initial static drop test specified by Condition 10(g) (''Static drop tests''), below; and

(ii) The reduced rated load for the specific job.

(g) *Static drop tests.* The employers must:

(i) Conduct static drop tests of each personnel cage that comply with the definition of ''static drop test'' specified by section 3 (''Definitions'') and the static drop-test procedures provided in section 13 (''Inspections and Tests'') of American National Standards Institute (ANSI) standard A10.22–1990 (R1998) (''American National Standard for Rope-Guided and Nonguided Worker's Hoists—Safety Requirements'');

(ii) Perform the initial static drop test at 125 percent of the maximum rated load of the personnel cage, and subsequent drop tests at no less than 100 percent of its maximum rated load; and

(iii) Use a personnel cage for raising or lowering workers only when no damage occurred to the components of the cage as a result of the static drop tests.

11. Safety Clamps

(a) *Fit to the guide ropes.* The employers must:

(i) Fit appropriately designed and constructed safety clamps to the guide ropes; and

(ii) Ensure that the safety clamps do not damage the guide ropes when in use.

(b) *Attach to the personnel cage.* The employers must attach safety clamps to each personnel cage for gripping the guide ropes.

(c) *Operation.* The safety clamps attached to the personnel cage must:

(i) Operate on the ''broken rope principle'' defined in section 3 (''Definitions'') of ANSI standard A10.22–1990 (R1998);

(ii) Be capable of stopping and holding a personnel cage that is carrying 100 percent of its maximum rated load and traveling at its maximum allowable speed if the hoist rope breaks at the footblock; and

(iii) Use a pre-determined and pre-set clamping force (*i.e.,* the ''spring compression force'') for each hoist system.

(d) *Maintenance.* The employers must keep the safety clamp assemblies clean and functional at all times.

12. Overhead Protection

(a) The employers must install a canopy or shield over the top of the personnel cage that is made of steel plate at least three-sixteenths (3/16) of an inch (4.763 mm) thick, or material of equivalent strength and impact resistance, to protect workers (*i.e.*, both inside and outside the chimney) from material and debris that may fall from above.

(b) The employers must ensure that the canopy or shield slopes to the outside of the personnel cage.[3]

13. Emergency-Escape Device

(a) *Location.* The employers must provide an emergency-escape device in at least one of the following locations:

(i) In the personnel cage, provided that the device is long enough to reach the bottom landing from the highest possible escape point; or

(ii) At the bottom landing, provided that a means is available in the personnel cage for the occupants to raise the device to the highest possible escape point.

(b) *Operating instructions.* The employers must ensure that written instructions for operating the emergency-escape device are attached to the device.

(c) *Training.* The employers must instruct each worker who uses a personnel cage for transportation on how to operate the emergency-escape device:

(i) Before the worker uses a personnel cage for transportation; and

(ii) Periodically, and as necessary, thereafter.

14. Personnel Platforms

(a) *Personnel platforms.* When the employers elect to replace the personnel cage with a personnel platform in accordance with Condition 2(a) of this variance, they must:

(i) Ensure that an enclosure surrounds the platform, and that this enclosure is at least 42 inches (106.7 cm) above the platform's floor;

(ii) Provide overhead protection when an overhead hazard is, or could be, present; and

(iii) Comply with the applicable scaffolding strength requirements specified by 29 CFR 1926.451(a)(1).

(b) *Fall-protection equipment.* Before workers use work platforms or boatswains' chairs, the employers must:

(i) Equip the workers with, and ensure that they use, full body harnesses, lanyards, and lifelines as specified by 29 CFR 1926.104 and the applicable requirements of 29 CFR 1926.502(d); and

(ii) Ensure that workers secure the lifelines to the top of the chimney and to a weight at the bottom of the chimney, and that the workers' lanyards are attached to the lifeline during the entire period of vertical transit.

15. Inspections, Tests, and Accident Prevention

(a) The employers must:

(i) Conduct inspections of the hoist system as required by 29 CFR 1926.20(b)(2);

(ii) Ensure that a competent person conducts daily visual inspections of the hoist system; and

[2] To reduce impact hazards should workers lose their balance because of cage movement.

[3] Paragraphs (a) and (b) were adapted from OSHA's Underground Construction Standard (29 CFR 1926.800(t)(4)(iv)).

(iii) Inspect and test the hoist system as specified by 29 CFR 1926.552(c)(15).

(b) The employers must comply with the accident prevention requirements of 29 CFR 1926.20(b)(3).

16. Welding

(a) The employers must use only qualified welders to weld components of the hoisting system.

(b) The employers must ensure that the qualified welders:

(i) Are familiar with the weld grades, types, and materials specified in the design of the system; and

(ii) Perform the welding tasks in accordance with 29 CFR 1926, subpart J (''Welding and Cutting'').

Appendix A

Nonmandatory Conditions When Performing Chimney Construction Using Hoist Systems

OSHA strongly encourages the employers to implement the following additional conditions under this order:

1. *Fall hazards.* The employers should install attachment points inside personnel cages for securing fall-arrest systems, and ensure that workers using personnel cages secure their fall-arrest systems to these attachment points.

2. *Shearing hazards.* The employers should:

(a) Provide workers who use personnel platforms or boatswain's chairs with instruction on the shearing hazards posed by the hoist system (*e.g.,* work platforms, scaffolds), and the need to keep their limbs or other body parts clear of these hazards during hoisting operations;

(b) Provide the instruction on shearing hazards:

(i) Before a worker uses a personnel platform or boatswain's chair at the worksite; and

(ii) Periodically, and as necessary, thereafter, including whenever a worker demonstrates a lack of knowledge about the hazard or how to avoid the hazard, a modification occurs to an existing shearing hazard, or a new shearing hazard develops at the worksite; and

(c) Attach a readily visible warning to each personnel platform and boatswain's chair notifying workers, in a language the workers understand, of potential shearing hazards they may encounter during hoisting operations, and that uses the following (or equivalent) wording:

(i) For personnel platforms: ''Warning—To avoid serious injury, keep your hands, arms, feet, legs, and other parts of your body inside this platform while it is in motion''; and

(ii) For boatswain's chairs: ''Warning—To avoid serious injury, do not extend your hands, arms, feet, legs, or other parts your body from the side or to the front of this chair while it is in motion.''

3. *Safety zone.* The employers should:

(a) Establish a clearly designated safety zone around the bottom landing of the hoist system; and

(b) Prohibit any worker from entering the safety zone except to access a personnel- or material-transport device, and then only when the device is at the bottom landing and not in operation (*i.e.*, when the drive components of the hoist machine are disengaged and the braking mechanism is properly applied).

4. *OSHA notification.* The employers should:

(a) At least 15 calendar days prior to commencing any chimney construction operation using the conditions specified herein, notify the OSHA Area Office nearest to the worksite, or the appropriate State-Plan Office, of the operation, including the location of the operation and the date the operation will commence;

(b) Inform OSHA national headquarters as soon as it has knowledge that it will:

(i) Cease to do business; or

(ii) Transfer the activities covered by this permanent variance to a successor company.

IX. Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC directed the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 5–2007 (72 FR 31160), and 29 CFR part 1905.

Signed at Washington, DC, on August 11th, 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–19761 Filed 8–17–09; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* September 10, 2009.

Time: 9 a.m. to 5 p.m.

Room: Worburn House Conference Centre, 20 Tavistock Square, London, England WC1H9HQ.

Program: This meeting will review applications for Digging into Data Challenge in Digging into Data, submitted to the Office of Digital Humanities, at the July 15, 2009 deadline.

2. *Date:* September 11, 2009.

Time: 9 a.m. to 5 p.m.

Room: JISC London Offices, Brettenham House (South Entrance), 5 Lancaster Place, London, England WC2E 7EN.

Program: This meeting will review applications for Digging into Data Challenge in Digging into Data, submitted to the Office of Digital Humanities, at the July 15, 2009 deadline.

Michael P. McDonald,

Advisory Committee, Management Officer.

[FR Doc. E9–19713 Filed 8–17–09; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, September 1, 2009.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The two items are open to the public.

Matters To Be Considered

4402G—Four Safety Recommendation Letters Concerning Helicopter Emergency Medical Services (HEMS).

8141—Highway Special Investigation Report—Pedal Misapplication in Heavy Vehicles.

NEWS MEDIA CONTACT: *Telephone:* (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, August 28, 2009.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: August 14, 2009.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E9–19900 Filed 8–14–09; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of August 17, 24, 31, September 7, 14, 21, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 17, 2009

There are no meetings scheduled for the week of August 17, 2009.

Week of August 24, 2009—Tentative

There are no meetings scheduled for the week of August 24, 2009.

Week of August 31, 2009—Tentative

Thursday, September 3, 2009

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Andrea Jones, 301 415–2309).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of September 7, 2009—Tentative

There are no meetings scheduled for the week of September 7, 2009.

Week of September 14, 2009—Tentative

There are no meetings scheduled for the week of September 14, 2009.

Week of September 21, 2009—Tentative

There are no meetings scheduled for the week of September 21, 2009.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: August 13, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–19846 Filed 8–14–09; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–59; Order No. 275]

New Competitive Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add a Global Expedited Package Services 1 (GEPS 1) contract to the Competitive Product List. This notice addresses procedural steps associated with this filing.

DATES: Comments are due August 19, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 7, 2009, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 1 (GEPS 1) contract.[1] GEPS 1 provides volume-based incentives for mailers that send large volumes of Express Mail International (EMI) and/or Priority Mail International (PMI). The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS 1 contracts, and is supported by the Governors' Decision filed in Docket No. CP2008–4.[2] Notice at 1. It further notes that in Order No. 86, which established GEPS 1 as a product, the Commission held that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633, and if they are functionally equivalent to previously submitted GEPS 1 contracts.[3] Notice at 1–2.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 86. It filed an application for non-public treatment of materials to maintain the contract and supporting documents under seal as Attachment 1 to the Notice. *Id.*, Attachment 1.

The Notice also includes, as Attachment 2, a redacted copy of

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, August 7, 2009 (Notice).

[2] *See* Docket No. CP2008–4, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, May 20, 2008.

[3] *See* Docket No. CP2008–5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86).

Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts. The Postal Service submitted the contract and supporting material under seal, and attached a redacted copy of the contract and certified statement required by 39 CFR 3015.5(c)(2) to the Notice as Attachments 3 and 4, respectively. *Id.* at 2. The term of the instant contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received.

The Notice advances reasons why the instant GEPS 1 contract fits within the Mail Classification Schedule language for GEPS 1. The Postal Service contends that the instant contract satisfies the pricing formula and classification system established in Governors' Decision No. 08–7. In addition, it states that several factors demonstrate the contract's functional equivalence with the previous GEPS 1 contracts, including the following: the customers are small or medium-sized businesses that mail directly to foreign destinations using EMI and/or PMI; the contract term of one year applies to all GEPS 1 contracts; the contracts have similar cost and market characteristics; and each requires payment through permit imprint. *Id.* at 4. It asserts that even though prices may be different based on volume or postage commitments made by the customers, or updated costing information, these differences do not affect the contract's functional equivalency because the GEPS 1 contracts share similar cost attributes and methodology. *Id.* at 4–5.

The Postal Service identifies other provisions which it states reflect minor differences between mailers.[4] These distinctions include provisions clarifying the correlation between regulatory oversight and contract expiration [5] and the availability of other Postal Service products and services; exclusion of certain flat rate products from the mail qualifying for discounts; a simpler mailing notice requirement along with provisions to meet scheduling needs; mail tender location changes; specific liquidated damages terms; provisions clarifying the mailer's volume and revenue commitment calculation in the event of early termination; and provisions clarifying aspects subject to regulatory oversight or revisions to update terms or references from a prior contract. *Id.* at 5–6.

The Postal Service states that these differences related to a particular mailer are ''incidental differences'' and do not change the conclusion that these agreements are functionally equivalent in all substantive aspects. *Id.* at 6.

The Postal Service concludes that this contract is functionally equivalent to previous GEPS 1 contracts and requests that this contract be included within the GEPS 1 product. *Id.*

II. Notice of Filing

The Commission establishes Docket No. CP2009–59 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3622 or 3642. Comments are due no later than August 19, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filing.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2009–59 for consideration of the issues raised in this docket.

2. Comments by interested persons in these proceedings are due no later than August 19, 2009.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Ann C. Fisher,

Acting Secretary.

[FR Doc. E9–19808 Filed 8–17–09; 8:45 am]

BILLING CODE 7710–FW–P

[4] The Postal Service states that the instant contract is the same as the contract approved by the Commission in Docket No. CP2009–50, Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, July 29, 2009. It asserts the only differences are the liquidated damages provisions and tender provisions. *Id.* at 2, n.4.

[5] The Postal Service states that some of the contracts generally provide that if all applicable reviews have not been completed at the time an older contract expires, the mailer must pay published prices until some alternative becomes available. In the instant case, the Postal Service seeks approval of a new GEPS 1 contract with a new customer.

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–58; Order No. 274]

New Competitive Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add a Global Expedited Package Services 1 (GEPS 1) contract to the Competitive Product List. This notice addresses procedural steps associated with this filing.

DATES: Comments are due August 19, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 7, 2009, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 1 (GEPS 1) contract.[1] GEPS 1 provides volume-based incentives for mailers that send large volumes of Express Mail International (EMI) and/or Priority Mail International (PMI). The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS 1 contracts, and is supported by the Governors' Decision filed in Docket No. CP2008–4.[2] Notice at 1. It further notes that in Order No. 86, which established GEPS 1 as a product, the Commission held that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633, and if they are functionally equivalent to previously submitted GEPS 1 contracts.[3] Notice at 1–2.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 86. It filed an application for non-public treatment of materials to maintain the contract and supporting documents

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, August 7, 2009 (Notice).

[2] *See* Docket No. CP2008–4, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, May 20, 2008.

[3] *See* Docket No. CP2008–5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86).

under seal as Attachment 1 to the Notice. *Id.,* Attachment 1.

The Notice also includes, as Attachment 2, a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts. The Postal Service submitted the contract and supporting material under seal, and attached a redacted copy of the contract and certified statement required by 39 CFR 3015.5(c)(2) to the Notice as Attachments 3 and 4, respectively. *Id.* at 2. The term of the instant contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received.

The Notice advances reasons why the instant GEPS 1 contract fits within the Mail Classification Schedule language for GEPS 1. The Postal Service contends that the instant contract satisfies the pricing formula and classification system established in Governors' Decision No. 08–7. In addition, it states that several factors demonstrate the contract's functional equivalence with the previous GEPS 1 contracts, including the following: The customers are small or medium-sized businesses that mail directly to foreign destinations using EMI and/or PMI; the contract term of one year applies to all GEPS 1 contracts; the contracts have similar cost and market characteristics; and each requires payment through permit imprint. *Id.* at 3–4. It asserts that even though prices may be different based on volume or postage commitments made by the customers, or updated costing information, these differences do not affect the contract's functional equivalency because the GEPS 1 contracts share similar cost attributes and methodology. *Id.* at 4–5.

The Postal Service identifies other provisions which it states reflect minor differences between mailers.[4] These distinctions include provisions clarifying the correlation between regulatory oversight and contract expiration[5] and the availability of other Postal Service products and services; exclusion of certain flat rate products from the mail qualifying for discounts; a simpler mailing notice requirement along with provisions to meet scheduling needs; mail tender location changes; specific liquidated damages terms; provisions clarifying the mailer's volume and revenue commitment calculation in the event of early termination; and provisions clarifying aspects subject to regulatory oversight or revisions to update terms or references from a prior contract. *Id.* at 5–6.

The Postal Service states that these differences related to a particular mailer are ''incidental differences'' and do not change the conclusion that these agreements are functionally equivalent in all substantive aspects. *Id.* at 6.

The Postal Service concludes that this contract is functionally equivalent to previous GEPS 1 contracts and requests that this contract be included within the GEPS 1 product. *Id.*

II. Notice of Filing

The Commission establishes Docket No. CP2009–58 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3622 or 3642. Comments are due no later than August 19, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filing.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2009–58 for consideration of the issues raised in this docket.

2. Comments by interested persons in these proceedings are due no later than August 19, 2009.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ann C. Fisher,

Acting Secretary.

[FR Doc. E9–19809 Filed 8–17–09; 8:45 am]

BILLING CODE 7710–FW–P

[4] The Postal Service states that the instant contract is the same as the contract approved by the Commission in Docket No. CP2009–50, Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, July 29, 2009. It asserts the only differences are the liquidated damages provisions and tender provisions. *Id.* at 2, n.4.

[5] The Postal Service states that some of the contracts generally provide that if all applicable reviews have not been completed at the time an older contract expires, the mailer must pay published prices until some alternative becomes available. In the instant case, the Postal Service seeks approval of a new GEPS 1 contract with a new customer.

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before October 19, 2009.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Gail Hepler, Chief 7a Loan Policy Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gail Hepler, Chief 7a Loan Policy Branch, Office of Financial Assistance 202–205–7530 *gail.hepler@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) is authorize to guaranty loans in the SBA Express and Pilot Loan Programs. The regulations covering these and other loan programs at 13 CFR part 120 requires certain information from loan applicants and lenders.

Title: ''SBA Express and Pilot Loan Programs (Export Express, Community Express and Patriot Express.''

Description of Respondents: Small Business Clients.

Form Number's: 1919, 1920SX, A, B, C, 2237, 2239.

Annual Responses: 98,200.

Annual Burden: 52,474.

Curtis B. Rich,

Acting Chief, Administrative Information Branch.

[FR Doc. E9–19797 Filed 8–17–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60479; File No. SR–CBOE–2009–058]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Hybrid Matching Algorithms

August 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 6, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to introduce an additional priority overlay related to small orders executed on its Hybrid System on a pilot basis until August 31, 2009. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rules 6.45A and 6.45B set forth, among other things, the manner in which electronic Hybrid System trades in options are allocated. Paragraph (a) of each rule essentially governs how incoming orders received electronically by the Exchange are electronically executed against interest in the CBOE quote. Paragraph (a) of each rule currently provides a ''menu'' of matching algorithms to choose from when executing incoming electronic orders. The menu format allows the Exchange to utilize different matching algorithms on a class-by-class basis. The menu includes, among other choices, the ultimate matching algorithm (''UMA''), as well as price-time and pro-rata priority matching algorithms with additional priority overlays. The priority overlays for price-time and pro-rata currently include: public customer priority for public customer orders resting on the Hybrid System, participation entitlements for certain qualifying market-makers, and a market turner priority for participants that are first to improve CBOE's disseminated quote. These overlays are optional.

The purpose of this rule filing is to adopt an additional priority overlay for small orders that can be applied to each of the three matching algorithms. The Exchange proposes to adopt the small order priority overlay on a pilot basis expiring on August 31, 2009, at which point the Exchange anticipates that this priority overlay will become operative on a permanent basis through a separate rule change.[5]

If the small order priority overlay is in effect for an option class, then the following would apply:

• Orders for five (5) contracts or fewer will be executed first by the Designated Primary Market-Maker (''DPM'') or Lead Market-Maker (''LMM''), as applicable, that is appointed to the option class; provided however, that on a quarterly basis the Exchange will evaluate what percentage of the volume executed on the Exchange (excluding volume resulting from the execution of orders in AIM (*see* CBOE Rule 6.74A, *Automated Improvement Mechanism (''AIM'')*) is comprised of orders for five (5) contracts or fewer executed by DPMs and LMMs, and will reduce the size of the orders included in this provision if such percentage is over forty percent (40%).

• This procedure only applies to the allocation of executions among non-customer orders and market maker quotes existing in the EBook at the time the order is received by the Exchange. No market participant is allocated any portion of an execution unless it has an existing interest at the execution price. Moreover, no market participant can execute a greater number of contracts than is associated with the price of its existing interest. Accordingly, the small order preference contained in this allocation procedure is not a guarantee; the DPM or LMM, as applicable, (i) must be quoting at the execution price to receive an allocation of any size, and (ii) cannot execute a greater number of contracts than the size that is associated with its quote.

• If a Preferred Market-Maker (*see* CBOE Rule 8.13, *Preferred Market-Maker Program*) is not quoting at a price equal to the national best bid or offer (''NBBO'') at the time a preferred order is received, the allocation procedure for small orders described above shall be applied to the execution of the preferred order. If a Preferred Market Maker is quoting at the NBBO at the time the preferred order is received, the allocation procedure for all other sized orders, shall be applied to the execution of the preferred order (e.g., if the default matching algorithm is pro-rata with a public customer and participation entitlement overlay, the order will execute first against any public customer orders, then the Preferred Market-Maker would receive its participation entitlement, then the remaining balance would be allocated on a pro-rata basis).

• The small order priority overlay will only be applicable to automatic executions and will not be applicable to any electronic auctions.[6]

Lastly, like the existing priority overlays, the small order priority overlay is optional. All determinations would be set forth in a regulatory circular.

According to the Exchange, because DPMs and LMMs have unique

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has submitted a separate rule change filing to adopt the small order priority overlay on a permanent basis, SR–CBOE–2009–056. That rule change is currently effective and, pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), and Rule 19b–4(6), 17 CFR 240.19b–4(f)(6) thereunder, will become operative on or about August 31, 2009.

[6] In addition to AIM, CBOE has various electronic auctions that are described under Rules 6.13A, *Simple Auction Liaison* (''SAL''), 6.14, *Hybrid Agency Liaison (HAL)*, and 6.74B, *Solicitation Auction Mechanism* (''AIM SAM''). Each of these auctions generally allocates executions pursuant to the matching algorithm in effect for the options class with certain exceptions noted in the respective rules.

obligations to the CBOE market,[7] they are provided with certain participation rights. Under the current rule, if the DPM or LMM, as applicable, is one of the participants with a quote at the best price, the participation entitlement is generally equal to 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange, 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange, and 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange.[8] The Exchange is now seeking to expand these programs to make available an allocation procedure on a pilot basis that provides that the DPM or LMM, as applicable, has precedence to execute orders of five (5) contracts or fewer. The Exchange believes that this small order priority overlay will not necessarily result in a significant portion of the Exchange's volume being executed by the DPM or LMM, as applicable. As stated above, the DPM or LMM would execute against such orders only if it is quoting at the best price, and only for the number of contracts associated with its quotation. Nevertheless, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for five (5) contracts or fewer executed by DPMs and LMMs, and will reduce the size of the orders included in this provision if such percentage is over forty percent (40%).

The small order priority overlay described above is part of CBOE's careful balancing of the rewards and obligations that pertain to each of the Exchange's classes of memberships. This balancing is part of the overall market structure that is designed to encourage vigorous price competition between Market-Makers on the Exchange, as well as maximize the benefits of price competition resulting from the entry of customer and non-customer orders, while encouraging participants to provide market depth. The Exchange believes the proposed small order priority overlay, which includes participation rights for DPMs and LMMs only when they are quoting at the best price, strikes the appropriate balance within its market and maximizes the benefits of an electronic market for all participants.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[9] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, as described further above, the Exchange believes the proposed rule change is part of the balancing of CBOE's overall market structure, which is designed to encourage vigorous price competition between Market-Makers on the Exchange, as well as maximize the benefits of price competition resulting from the entry of customer and non-customer orders, while encouraging participants to provide market depth.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[14] However, Rule 19b–4(f)(6)(iii)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to encourage fair competition among brokers and dealers and the exchanges by allowing the CBOE to effectively compete with options exchanges that offer a similar program. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot to be implemented immediately.[16] In addition, the Commission notes that the Exchange has filed the proposed rule change that permanently adopts the small order priority overlay,[17] based on substantially similar rules already in place at other national securities exchanges.[18] Accordingly, the Commission designates the proposed rule change, to adopt the small order priority overly on a pilot basis until August 31, 2009, operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[7] For example DPMs must, among other things, (i) provide continuous electronic quotes in at least 90% of the series of each multiply-listed option classed allocated to it and in 100% of the series of each singly-listed option class allocated to it, and assure that its disseminated market quotes are accurate; (ii) comply with bid/ask differential requirements; (iii) ensure that a trading rotation is initiated promptly following the opening of the underlying security (or promptly after 8:30 am Central Time in an index class) in 100% of the series of each allocated class by entering opening quotes as necessary. *See* CBOE Rule 8.85, *DPM Obligations*; *see also* CBOE Rule 8.15A, *Lead Market-Makers in Hybrid Classes*.

[8] *See* CBOE Rules 6.45A(a)(i)(C) and (ii)(2), 6.45B(a)(i)(2) and (ii)(C), 8.15B, *Participation Entitlement for LMMs*, and 8.87, *Participation Entitlement of DPMs and e-DPMs*.

[9] 15 U.S.C. 78s(b)(1).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to be met.

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] *See* SR–CBOE–2009–056.

[18] *See, e.g.,* ISE Rule 713.01 and 713.03.

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2009–058 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–058. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–058 and should be submitted on or before September 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19692 Filed 8–17–09; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60457; File No. SR–NYSE–2009–76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Deleting NYSE Rule 409A and Adopting New Rule 2266 To Correspond With Rule Changes Recently Filed by the Financial Industry Regulatory Authority, Inc.

August 7, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 28, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to proposes to [sic] delete NYSE Rule 409A and to adopt new Rule 2266 to correspond with rule changes recently filed by the Financial Industry Regulatory Authority, Inc. (''FINRA'') and approved by the Commission.[4] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009) (order approving FINRA 2009–016).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to delete NYSE Rule 409A and to adopt new Rule 2266 to correspond with rule changes recently filed by FINRA and approved by the Commission.

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, NYSE, NYSER and FINRA entered into an agreement (the ''Agreement'') to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations (''FINRA Incorporated NYSE Rules'').[5] As part of its effort to reduce regulatory duplication and relieve firms that are members of both FINRA and the Exchange of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

Proposed Conforming Amendments to NYSE Rules

As discussed in more detail below, FINRA amended certain NASD and FINRA Incorporated NYSE Rules and adopted consolidated FINRA Rules to replace them. The NYSE hereby proposes to delete NYSE Rule 409A and to adopt new Rule 2266 to conform to the changes adopted by FINRA.[7]

[5] *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement) *and* Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as ''Common Rules''). Paragraph 2(b) of the 17d–2 Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[7] NYSE Amex LLC has submitted a companion rule filing to conform its corresponding NYSE

Continued

In relevant part, FINRA adopted NASD Rule 2342 (SIPC Information) as consolidated FINRA Rule 2266.[8] FINRA Rule 2266 requires all FINRA members, except for those members that are not Securities Investor Protection Corporation (''SIPC'') members or whose business consists exclusively of the sale of investments that are not subject to SIPC protection, to advise all new customers in writing at the time they open an account that they may obtain information about SIPC by contacting SIPC and to provide such customers with SIPC's contact information. Such information must also be provided annually to all existing customers. Where both an introducing firm and a clearing firm service the same account, the firms may assign these requirements to one or the other firm.[9]

Because it is substantively similar to this new FINRA Rule, FINRA deleted FINRA Incorporated NYSE Rule 409A (SIPC Disclosures). In particular, FINRA Incorporated NYSE Rule 409A requires member organizations to advise each customer in writing, upon the opening of an account and annually thereafter, that they may obtain information about SIPC and to provide such customers with SIPC's contact information. Similar to FINRA Rule 2266, where a clearing agreement is in place, these requirements may be assigned to either the introducing or clearing firm. However, FINRA Incorporated NYSE Rule 409A does not contain the exclusions in FINRA Rule 2266.[10]

FINRA deleted FINRA Incorporated NYSE Rule 409A because it believes that FIRNA [sic] Rule 2266, which includes the exclusionary provisions for non-SIPC members or members that sell exclusively non-SIPC securities, is the more appropriate rule for its members.[11]

To harmonize the NYSE Rules with the approved FINRA Rules, the Exchange correspondingly proposes to delete NYSE Rule 409A and to adopt proposed NYSE Rule 2266, which is substantially similar to the new FINRA Rule. As proposed, NYSE Rule 2266 adopts the same language as FINRA Rule 2266, except for substituting for or adding to, as needed, the term ''member organization'' for the term ''member'', and making corresponding technical changes. As with the consolidated FINRA Rule, under proposed NYSE Rule 2266 Exchange members and member organizations will be required to provide SIPC disclosures to all new customers upon opening an account and to existing customers on an annual basis.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[12] in general, and further the objectives of Section 6(b)(5) of the Act,[13] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule changes also support the principles of Section 11A(a)(1)[14] of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rule, such changes are technical in nature and do not change the substance of the proposed NYSE Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the immediate change of the NYSE's rule to make it consistent with the FINRA rule, thereby making compliance for dual members less burdensome. For these reasons, the Commission designates the proposal to be effective and operative upon filing.[20]

Amex Equities Rules to the changes proposed in this filing. *See* SR–NYSE–Amex-2009–52, formally submitted July 28, 2009).

[8] In its filing, FINRA also adopted NASD Rules 2130 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)), 2810 (Direct Participation Programs) and 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as consolidated FINRA Rules 2080, 2310 and 4551, respectively. *See* Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009). NYSE is not adopting these FINRA Rules.

[9] *See* Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009).

[10] *See* Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009).

[11] *See* Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–76 and should be submitted on or before September 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60465; File No. SR–BX–2009–041]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Eliminate Chapter V, Section 13 (Unusual Market Conditions) of the BOX Trading Rules and To Modify Related Rules

August 10, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 3, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to eliminate Chapter V, Section 13 (Unusual Market Conditions) of the Trading Rules of the Boston Options Exchange Group, LLC (''BOX'') and to modify related rules. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule is to eliminate Chapter V, Section 13, as well as certain ancillary rules, which deal with so-called ''fast markets.'' The Exchange believes that ''fast market'' conditions do not occur on the electronic and automated BOX market. In cases in which a system malfunction or other occurrence caused a delay in disseminating accurate quotes, rather than relying on the current rules in Chapter V, Section 13, the Exchange would halt trading until the issue could be resolved.

The Exchange proposes to eliminate Chapter V, Section 13, as well as certain ancillary rules relating to fast markets. The Exchange has never declared a fast market. Generally, a fast market is characterized by heavy trading and high price volatility in which orders may be submitted to market makers at such a rapid pace that a backlog of orders builds, causing delays in execution. If such a fast market occurred, delays could in turn cause significant price differentials between the quoted price and executed price. Generally, Chapter V, Section 13 provides that if the Exchange declared a fast market, it may inform traders that quotes are not firm and to take other actions as necessary in furtherance of a fair and orderly market.

Chapter V, Section 13 provides for an Options Official to determine that the level of trading activity or the existence of unusual market conditions is such that BOX is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately reflects the current state of the market on BOX. Pursuant to current rules, if an Options Official determined the market in the option to be ''fast,'' the Official could take various steps including suspending minimum size requirements for quotations, turning off the Price Improvement Period (''PIP'') process, or taking other actions in order to promote a fair and orderly market.

In an electronic market such as BOX, during trading hours, orders are

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

matched automatically with quotes on the other side of the market according to time priority, and executed immediately.[4] Because there is no trading floor and all orders are received and managed electronically, all orders on BOX are executed with matching contra orders within a fraction of a second after the matching quote is received.[5] Any backlog in processing orders would be a result of a systems malfunction rather than from fast market conditions. Should any such backlog occur, the Exchange would halt trading on BOX until the issue could be resolved.[6] Accordingly, the Exchange believes Chapter V, Section 13 is unnecessary in the BOX Rules and should be removed.

In addition to removing Chapter V, Section 13, the proposed rule change would also remove certain rules related to fast markets. The Exchange proposes to modify Chapter VI, Section 6(a) to remove a fast market rule exception to the general rule that all Market Maker bids or offers must be of a size of at least ten (10) contracts. The Exchange also proposes to amend Section 6(c). First, Section 6(c)(ii)(2) will be removed to reflect the previously described removal of Chapter V, Section 13. Second, references to Rule 11Ac1–1 will be replaced with Rule 602 of Regulation NMS under the Exchange Act (''Rule 602''). With the implementation of Regulation NMS, Rule 11Ac1–1, in pertinent part, has been incorporated into Rule 602. The proposed rule change would also modify Chapter XIV (Index Rules), Section 9(b) (Trading Sessions) by eliminating the declaration of a fast market as a factor in determining whether to delay the opening of the index options market.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposal will align the BOX Rules to more accurately reflect the circumstances surrounding trading on an electronic exchange and promote transparency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2009–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–041. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–041 and should be submitted on or before September 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

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[4] *See* BOX Trading Rules, Chapter V, Section 16.

[5] Subject to certain exceptions written into the BOX Trading Rules, such as Directed Orders (Chapter VI, Section 5(b)–(c)), and other exposure periods (*See generally* Chapter V, Section 16 (Execution and Price/Time Priority).

[6] *See* BOX Trading Rules, Chapter V, Section 10(a).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60476; File No. SR–CBOE–2009–056]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Hybrid Matching Algorithms

August 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rules 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System*, and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System*, to include an additional priority overlay. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rules 6.45A and 6.45B set forth, among other things, the manner in which electronic Hybrid System trades in options are allocated. Paragraph (a) of each rule essentially governs how incoming orders received electronically by the Exchange are electronically executed against interest in the CBOE quote. Paragraph (a) of each rule currently provides a ''menu'' of matching algorithms to choose from when executing incoming electronic orders. The menu format allows the Exchange to utilize different matching algorithms on a class-by-class basis. The menu includes, among other choices, the ultimate matching algorithm (''UMA''), as well as price-time and pro-rata priority matching algorithms with additional priority overlays. The priority overlays for price-time and pro-rata currently include: public customer priority for public customer orders resting on the Hybrid System, participation entitlements for certain qualifying market-makers, and a market turner priority for participants that are first to improve CBOE's disseminated quote. These overlays are optional.

The purpose of this rule filing is to adopt an additional priority overlay for small orders that can be applied to each of the three matching algorithms. In particular, if the small order priority overlay is in effect for an option class, then the following would apply:

- Orders for five (5) contracts or fewer will be executed first by the Designated Primary Market-Maker (''DPM'') or Lead Market-Maker (''LMM''), as applicable, that is appointed to the option class; provided however, that on a quarterly basis the Exchange will evaluate what percentage of the volume executed on the Exchange (excluding volume resulting from the execution of orders in AIM (*see* CBOE Rule 6.74A, *Automated Improvement Mechanism (''AIM'')*) is comprised of orders for five (5) contracts or fewer executed by DPMs and LMMs, and will reduce the size of the orders included in this provision if such percentage is over forty percent (40%).
- This procedure only applies to the allocation of executions among non-customer orders and market maker quotes existing in the EBook at the time the order is received by the Exchange. No market participant is allocated any portion of an execution unless it has an existing interest at the execution price. Moreover, no market participant can execute a greater number of contracts than is associated with the price of its existing interest. Accordingly, the small order preference contained in this allocation procedure is not a guarantee; the DPM or LMM, as applicable, (i) must be quoting at the execution price to receive an allocation of any size, and (ii) cannot execute a greater number of contracts than the size that is associated with its quote.
- If a Preferred Market-Maker (*see* CBOE Rule 8.13, *Preferred Market-Maker Program*) is not quoting at a price equal to the national best bid or offer (''NBBO'') at the time a preferred order is received, the allocation procedure for small orders described above shall be applied to the execution of the preferred order. If a Preferred Market Maker is quoting at the NBBO at the time the preferred order is received, the allocation procedure for all other sized orders, shall be applied to the execution of the preferred order (*e.g.*, if the default matching algorithm is pro-rata with a public customer and participation entitlement overlay, the order will execution first against any public customer orders, then the Preferred Market-Maker would receive its participation entitlement, then the remaining balance would be allocated on a pro-rata basis).
- The small order priority overlay will only be applicable to automatic executions and will not be applicable to any electronic auctions.[5]

Lastly, it should be noted that, like the existing priority overlays, the small order priority overlay is optional. All determinations would be set forth in a regulatory circular.

According to the Exchange, because DPMs and LMMs have unique obligations to the CBOE market,[6] they are provided with certain participation rights. Under the current rule, if the DPM or LMM, as applicable, is one of the participants with a quote at the best price, the participation entitlement is generally equal to 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange, 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange, and 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange.[7] The Exchange is now seeking to expand these programs to make available an allocation procedure

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] In addition to AIM, CBOE has various electronic auctions that are described under Rules 6.13A, *Simple Auction Liaison* (''SAL''), 6.14, *Hybrid Agency Liaison (HAL)*, and 6.74B, *Solicitation Auction Mechanism* (''AIM SAM''). Each of these auctions generally allocates executions pursuant to the matching algorithm in effect for the options class with certain exceptions noted in the respective rules.

[6] For example DPMs must, among other things, (i) provide continuous electronic quotes in at least 90% of the series of each multiply-listed option classed allocated to it and in 100% of the series of each singly-listed option class allocated to it, and assure that its disseminated market quotes are accurate; (ii) comply with bid/ask differential requirements; (iii) ensure that a trading rotation is initiated promptly following the opening of the underlying security (or promptly after 8:30 am Central Time in an index class) in 100% of the series of each allocated class by entering opening quotes as necessary. *See* CBOE Rule 8.85, *DPM Obligations*; *see also* CBOE Rule 8.15A, *Lead Market-Makers in Hybrid Classes.*

[7] *See* CBOE Rules 6.45A(a)(i)(C) and (ii)(2), 6.45B(a)(i)(2) and (ii)(C), 8.15B, *Participation Entitlement for LMMs,* and 8.87, *Participation Entitlement of DPMs and e-DPMs.*

that provides that the DPM or LMM, as applicable, has precedence to execute orders of five (5) contracts or fewer. The Exchange believes that this small order priority overlay will not necessarily result in a significant portion of the Exchange's volume being executed by the DPM or LMM, as applicable. As stated above, the DPM or LMM would execute against such orders only if it is quoting at the best price, and only for the number of contracts associated with its quotation. Nevertheless, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for five (5) contracts or fewer executed by DPMs and LMMs, and will reduce the size of the orders included in this provision if such percentage is over forty percent (40%).

The small order priority overlay described above is part of CBOE's careful balancing of the rewards and obligations that pertain to each of the Exchange's classes of memberships. This balancing is part of the overall market structure that is designed to encourage vigorous price competition between Market-Makers on the Exchange, as well as maximize the benefits of price competition resulting from the entry of customer and non-customer orders, while encouraging participants to provide market depth. The Exchange believes the proposed small order priority overlay, which includes participation rights for DPMs and LMMs only when they are quoting at the best price, strikes the appropriate balance within its market and maximizes the benefits of an electronic market for all participants.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[8] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, as described further above, the Exchange believes the proposed rule change is part of the balancing of CBOE's overall market structure, which is designed to encourage vigorous price competition between Market-Makers on the Exchange, as well as maximize the benefits of price competition resulting from the entry of customer and non-customer orders, while encouraging participants to provide market depth.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2009–056 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–056. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–056 and should be submitted on or before September 8, 2009.

[8] 15 U.S.C. 78s(b)(1).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19734 Filed 8–17–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60478; File No. SR–NYSE–2009–81]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending Until August 21, 2009, the Operation of Interim NYSE Rule 128 Which Permits the Exchange To Cancel or Adjust Clearly Erroneous Executions If They Arise Out of the Use or Operation of Any Quotation, Execution or Communication System Owned or Operated by the Exchange, Including Those Executions That Occur in the Event of a System Disruption or System Malfunction

August 11, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 10, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until August 21, 2009, the operation of interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend until August 21, 2009, the operation of interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction.

Prior to the implementation of NYSE Rule 128 on January 28, 2008,[4] the NYSE did not have a rule providing the Exchange with the authority to cancel or adjust clearly erroneous trades of securities executed on or through the systems and facilities of the NYSE.

In order for the NYSE to be consistent with other national securities exchanges which have some version of a clearly erroneous execution rule, the Exchange is drafting an amended clearly erroneous rule which will accommodate such other exchanges but will be appropriate for the NYSE market model.

The NYSE notes that the Commission approved an amended clearly erroneous execution rule for Nasdaq in May 2008.[5] On July 28, 2008, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until October 1, 2008[6] in order to review the provisions of Nasdaq's clearly erroneous rule and to consider integrating similar standards into its own amendment to Rule 128. On October 1, 2008,[7] the Exchange filed with the SEC a further request to extend the operation of interim Rule 128 until January 9, 2009 in order to consider integrating similar standards into the amendment to Rule 128. On January 9, 2009,[8] the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until March 9, 2009, indicating that the Exchange was still in the process of reviewing the Nasdaq rule with a view towards incorporating certain provisions into the amendment of interim Rule 128.

On February 10, 2009, NYSE Arca submitted a proposal to the SEC to amend its clearly erroneous rule. The NYSE Arca proposed rule differed in certain respects from the Nasdaq clearly erroneous rule. On March 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until June 9, 2009[9] to finalize review of NYSE Arca's proposed amended CEE rule, which included market wide CEE initiatives, to determine if it was appropriate to incorporate such provisions into the Rule 128 amendment.

Thereafter, on April 24, 2009, NYSE Arca filed a revised rule change with the Commission to amend its clearly erroneous rule (NYSE Arca Rule 7.10).[10] The Exchange was in the process of finalizing its review of NYSE Arca's revised CEE rule change, which also included market wide CEE initiatives, to determine if it was appropriate to incorporate all such provisions into NYSE's interim Rule 128 amendment. On June 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until July 15, 2009[11] to finalize review of NYSE Arca's proposed amended CEE rule. On July 15, 2009[12] the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 1, 2009 to finalize review of

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 57323 (February 13, 2008), 73 FR 9371 (February 20, 2008) (SR–NYSE–2008–09).

[5] *See* Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008) (SR–NASDAQ–2007–001).

[6] *See* Securities Exchange Act Release No. 58328 (August 8, 2008), 73 FR 47247 (August 13, 2008) (SR–NYSE–2008–63).

[7] *See* Securities Exchange Act Release No. 58732 (October 3, 2008), 73 FR 61183 (October 15, 2008) (SR–NYSE–2008–99).

[8] *See* Securities Exchange Act Release No. 59255 (January 15, 2009) 74 FR 4496 (January 26, 2009) (SR–NYSE–2009–02).

[9] *See* Securities Exchange Act Release No. 59581 (March 9, 2009) 74 FR 12431 (March 24, 2009) (SR–NYSE–2009–26).

[10] *See* Securities Exchange Act Release No. 59838 (April 28, 2009) 74 FR 20767 (May 5, 2009) (SR–NYSEArca–2009–36) (*See* NYSE Arca Rule 7.10).

[11] *See* Securities Exchange Act Release No. 60131 (June 17, 2009) 74 FR 30196 (June 24, 2009) (SR–NYSEArca–2009–57). [sic]

[12] *See* Securities Exchange Act Release No. 60312 (July 15, 2009) 74 FR 36298 (July 22, 2009) (SR–NYSE–2009–70).

NYSE Arca's proposed amended CEE rule. On July 31, 2009 the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 10, 2009 [13] to finalize review of NYSE Arca's proposed amended CEE rule.

The Exchange anticipates finalizing proposed rule text of its clearly erroneous execution rule shortly, and is, therefore, requesting to extend the operation of interim Rule 128 until August 21, 2009. Prior to August 21, 2009, the Exchange intends to formally file a 19b–4 rule change amending interim Rule 128.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') [14] for this proposed rule change is the requirement under Section 6(b)(5) [15] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

As articulated more fully in the ''Purpose'' Section above, the proposed rule would place the NYSE on equal footing with other national securities exchanges. This will promote the integrity of the market and protect the public interest, since it would permit all exchanges to cancel or adjust clearly erroneous trades when such trades occur, rather than canceling them on all other markets, but leaving them standing on only one market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [18] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay because the Exchange believes that the absence of such a rule in an automated and fast-paced trading environment poses a danger to the integrity of the markets and the public interest. NYSE notes that immediate effectiveness of the proposed rule change will immediately and timely enable NYSE to cancel or adjust clearly erroneous trades that may present a risk to the integrity of the equities markets and all related markets. The Commission believes that waiving the 30-day operative delay [20] is consistent with the protection of investors and the public interest because such waiver will permit the Exchange to continue operation of interim NYSE Rule 128 on an uninterrupted basis, and therefore designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–81. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2009–81 and should be submitted on or before September 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19736 Filed 8–17–09; 8:45 am]

BILLING CODE 8010–01–P

[13] *See* Securities Exchange Act Release No. 60419 (August 7, 2009) 74 FR 39987 (August 10, 2009) (SR–NYSE–2009–79).

[14] 15 U.S.C. 78f(a).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing period in this case.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6).

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60487; File No. SR–MSRB–2009–12]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Amendments to Rule G–11(i) (Settlement of Syndicate or Similar Account), Rule G–11(j) (Payment of Designations), and Rule G–12(i) (Settlement of Joint or Similar Account)

August 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 6, 2009, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission proposed amendments to Rule G–11(i) (settlement of syndicate or similar account), MSRB Rule G–11(j) (payment of designations), and MSRB Rule G–12(i) (settlement of joint or similar account). For the proposed amendments to Rule G–11, the MSRB requested that the amendments become effective for new issues of municipal securities for which the Time of Formal Award (as defined in Rule G–34(a)(ii)(C)(1)(a)) is more than 30 calendar days after the date the amendments are approved by the SEC. For the proposed amendments to Rule G–12, the MSRB requested that the amendments become effective for secondary market trading accounts formed more than 30 days after the date the amendments are approved by the SEC.

The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org/msrb1/sec.asp*), at the MSRB's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change accelerates the settlement of syndicate accounts and secondary market trading accounts, and the payment of designations, by shortening certain time periods within the rules. These proposals are designed to reduce the exposure of syndicate and secondary market trading account members to the risk of potential deterioration in the credit of the syndicate or account manager during the pendency of account settlements. Since the existing rules were adopted in the 1970s, dealers and those firms who invoice them for syndicate expenses have adopted significantly more efficient billing and accounting systems. The MSRB believes that such systems make reductions in the time periods for distribution of syndicate and secondary market trading account profits feasible and not unduly burdensome to dealers. Furthermore, many fees are agreed upon in advance or can be estimated with considerable accuracy soon after settlement.

Currently, Rule G–11(i), on settlement of syndicate or similar account, requires that final settlement of an underwriting syndicate or similar account be made within 60 calendar days following the date all securities have been delivered by the syndicate or account manager to the syndicate or account members (''bond closing''). Rule G–11(j), on payments of designations, requires that any credit designated by a customer in connection with the purchase of new issue securities as due to a member of a syndicate shall be distributed to such member by any dealer handling such order within 30 calendar days following bond closing.

The proposed rule change changes the deadlines in Rule G–11 to 30 calendar days after bond closing for distributions (currently 60 calendar days) and 10 calendar days after bond closing for designations (currently 30 calendar days). To facilitate implementation of these reduced time periods, the MSRB also determined to add a new requirement that all syndicate members submit their designations to the syndicate manager within two business days after bond closing.

Rule G–12(i), on settlement of joint or similar account, contains requirements for the settlement of joint or similar accounts formed in the secondary market. The rule currently requires that the settlement of these accounts be made within 60 days following the date all securities have been delivered by the syndicate or account manager to the syndicate or account members (''delivery date''). The proposed rule change changes the deadline in the rule to 30 calendar days following delivery date.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[3] which provides that the MSRB's rules shall:

> [B]e designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act because it will further the free and open market in municipal securities by reducing the exposure of dealers to the potential deterioration of the credit of syndicate managers during the period prior to settlement of syndicate accounts and providing a comparable rule for the settlement of secondary market trading accounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On May 12, 2009, the MSRB requested comment on draft

[3] 15 U.S.C. 78o–4(b)(2)(C).

amendments to Rules G–11 and G–12.[4] The MSRB received comments on the proposed rule change from two commentators.[5]

First Southwest applauded the MSRB for proposing the changes to Rule G–11 and urged that they be adopted. No comment was made on the proposed change to Rule G–12. First Southwest also urged that the MSRB study how syndicates could be structured to eliminate the bankruptcy risk of the senior manager to the co-managers. The MSRB's Regulatory Review Special Committee gave preliminary consideration to potentially mandating such a structural change, and its initial review indicated that the cost of such a structural change likely would outweigh the potential benefits. Accordingly, the Committee chose to recommend to the full Board, and the Board approved, the proposed rule changes instead.

SIFMA applauded the MSRB for attempting to reduce the exposure of syndicate members to a potential deterioration in credit of the syndicate manager by means of the draft amendments to Rules G–11 and G–12. However, SIFMA only recommended that the changes to Rule G–12 be adopted. It opposed the proposed change to Rule G–11(i) that would require settlement of syndicate accounts within 30 calendar days rather than 60 calendar days for three reasons: (1) It said that, in many competitive deals, not all the bonds were sold within 30 days; (2) It said that many underwriters' counsel bills were not received within 30 days, particularly for new and complicated financings; and (3) It said that 30 calendar days usually amounted to only 20 business days, which it said was too short a period. SIFMA opposed the proposed changes to the Rule G–11(j) on payment of designations for two reasons. First, it said that the new rule requiring co-managers to inform the syndicate manager within two business days after closing of a bond issue was unduly burdensome to co-managers. Instead, it said that the syndicate manager should be required to obtain the information from the co-managers outside of MSRB rules. Second, SIFMA said that the shortening of the time period for payments of designations from 30 calendar days to 10 calendar days would unduly burden the syndicate manager, with minimal reduction in risk. SIFMA said that the periods for settlement of syndicate accounts and payment of designations should be the same: 60 days.

As to SIFMA's comment about the potential effect of the draft Rule G–11(i) changes on competitive underwritings, the Board concluded that only a small percentage of syndicates for competitive underwritings could not be settled within 30 days after closing of a bond issue and that, in such a case, the syndicate could be split up or any unsold bonds sold to a general account of the whole. The Board did not agree with SIFMA's comment regarding the timing of the receipt of underwriter's counsel bills. The Board also found that it was reasonable to require the payment of designations within 10 calendar days after closing of a bond issue and to require all syndicate members to notify the syndicate manager of their designations within two business days after closing of a bond issue.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

For the proposed amendments to Rule G–11, the MSRB requested that the amendments become effective for new issues of municipal securities for which the Time of Formal Award (as defined in Rule G–34(a)(ii)(C)(1)(a)) is more than 30 calendar days after the date the amendments are approved by the SEC. For the proposed amendments to Rule G–12, the MSRB requested that the amendments become effective for secondary market trading accounts formed more than 30 days after the date the amendments are approved by the SEC.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2009–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2009–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2009–12 and should be submitted on or before September 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19745 Filed 8–17–09; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* MSRB Notice 2009–20 (May 12, 2009).

[5] Letter from Hill A. Feinberg, Chairman and Chief Executive Officer, First Southwest Company (''First Southwest'') to Margaret C. Henry, dated June 26, 2009; Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA'') to Margaret C. Henry, dated June 29, 2009.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60486; File No. SR–Phlx–2009–68]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Settlement of FLEX Currency Options

August 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on August 6, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify Phlx Rule 1079 (FLEX Index, Equity and Currency Options) regarding settlement of FLEX currency options[3] in U.S. dollars. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify Phlx Rule 1079 regarding settlement of FLEX currency options in U.S. dollars.

In 2007, the Exchange listed and began trading six U.S. dollar-settled FCOs.[4] In July 2009, the Commission approved the Exchange's filing to list and trade ten additional U.S. dollar-settled FCOs (the ''New Currencies'').[5] The Exchange's 2009 filing, in addition to providing the capability to list and trade the New Currencies, among other things established position limits and spelled out a uniform pricing convention (methodology) for all U.S. dollar-settled FCOs.

Currently, sixteen FCOs are listed and traded on the Exchange. The defining characteristic of all FCOs is that they are all U.S. dollar-settled, that is, they do not require delivery of an underlying foreign currency and settle only in U.S. dollars.[6] Each of these FCOs can be traded as long-term FLEX currency options. FLEX currency options, which are U.S. dollar-settled FCOs that have long expiration dates up to three years in length, also settle in U.S. dollars.[7]

This filing clarifies Rule 1079 indicating that FLEX currency options settle in U.S. dollars.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by clarifying the settlement of FLEX currency options in U.S. dollars.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6)(iii) thereunder[11] because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has asked the Commission to waive the 30-day operative delay set forth in Rule 19b–4(f)(6)(iii). The Commission believes investors will be best served by clarifying without delay that FLEX currency options settle in U.S. dollars on the Exchange. The Commission also notes that the proposed rule change presents no novel issues. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.[12]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FLEX currency options are long-term U.S. dollar-settled foreign currency options (''FCOs'') that are up to three years in length. *See* Rule 1079(a)(6). FCOs are also known as World Currency Options (''WCOs''). *See also* Rule 1012 (Exchange may list FCOs having up to three years from the time they are listed until expiration).

[4] *See* Securities Exchange Act Release Nos. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR–Phlx–2006–34) (approval order regarding the listing and trading of U.S. dollar-settled FCOs on the British pound and the Euro); and 56034 (July 10, 2007), 72 FR 38853 (July 16, 2007) (SR–Phlx–2007–34) (approval order regarding the listing and trading of U.S. dollar-settled FCOs on the Australian dollar, the Canadian dollar, the Swiss franc, and the Japanese yen).

[5] *See* Securities Exchange Act Release No. 60196 (June 24, 2009), 74 FR 31782 (July 2, 2009) (approval order regarding the listing and trading of the Mexican peso, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, and the Swedish krona).

[6] In contrast, physical delivery foreign currency options, so named because settlement could involve delivery of the underlying currency, were listed and traded on the exchange through early 2007; all open interest in physical delivery options was traded out or expired by the end of March 2007.

[7] *See* Rule 1079(a)(9)(B).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the

Continued

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2009–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–68, and should be submitted on or before September 8, 2009.

proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19744 Filed 8–17–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60475; File No. SR–FINRA–2009–047]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 3160 (Networking Arrangements Between Members and Financial Institutions) in the Consolidated FINRA Rulebook

August 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 21, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 2350 (Broker/Dealer Conduct on the Premises of Financial Institutions) as FINRA Rule 3160 in the consolidated FINRA rulebook, subject to certain amendments.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt NASD Rule 2350 (Broker/Dealer Conduct on the Premises of Financial Institutions), subject to certain amendments, as FINRA Rule 3160 (Networking Arrangements Between Members and Financial Institutions). The details of the proposed rule change are described below.

NASD Rule 2350

NASD Rule 2350 governs the activities of broker-dealers on the premises of financial institutions.[4] Also known as the ''bank broker-dealer rule,'' Rule 2350 generally requires broker-dealers that conduct business on the premises of a financial institution where retail deposits are taken to: (1) Enter into a written agreement with the financial institution specifying each party's responsibilities and the terms of compensation (networking agreement); (2) segregate the securities activities conducted on the premises of the financial institution from the retail deposit-taking area; (3) allow access for inspection and examination by the SEC and FINRA; (4) ensure that communications with customers clearly identify that the broker-dealer services are provided by the member; (5) disclose to customers that the securities products offered by the broker-dealer are not insured like other banking products; and (6) make reasonable

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] The term ''financial institution'' includes Federal and State-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions required by law.

efforts at account opening to obtain a customer's written acknowledgement of the receipt of such disclosure. Rule 2350 applies only when broker-dealer services are conducted either in person, over the telephone, or through any other electronic medium, on the premises of a financial institution where retail deposits are taken, by a broker-dealer that has a physical presence on those premises.[5]

NASD Rule 2350 was adopted to reduce potential customer confusion in dealing with broker-dealers that conduct business on the premises of financial institutions, and to clarify the relationship between a broker-dealer and a financial institution entering into a networking agreement.[6]

The Gramm-Leach Bliley Act and Regulation R

In 2007, the SEC and the Board of Governors of the Federal Reserve jointly adopted rules, known as Regulation R,[7] that implement the bank broker provisions of the Gramm-Leach Bliley Act of 1999 (''GLB''). These provisions replaced what had been a blanket exception for banks from the definition of ''broker'' [8] under the Exchange Act with eleven exceptions from the definition of ''broker'' that are codified in Exchange Act Section 3(a)(4)(B).

Exchange Act Section 3(a)(4)(B)(i) provides an exception from the definition of ''broker'' for banks that enter into third-party brokerage (or networking) arrangements with a broker-dealer (the networking exception). Under this exception, a bank is not considered to be a broker if it enters into a contractual or other written arrangement with a registered broker-dealer under which the broker-dealer offers brokerage services on or off bank premises, subject to certain conditions (this differs from NASD Rule 2350, which only applies to broker-dealers offering brokerage services on a financial institution's premises).[9] Although this exception generally provides that a bank may not pay its unregistered employees incentive compensation for referring a customer to a broker-dealer, it does permit a bank employee to receive a ''nominal one-time cash fee of a fixed dollar amount'' that is not contingent on whether the referral results in a transaction with the broker-dealer.[10] Further, Rule 701 of Regulation R provides an exemption for referrals of certain institutional and high net worth clients that may result in the payment of a higher referral fee (*i.e.,* incentive compensation of more than a nominal amount) to bank employees and may be contingent on the occurrence of a securities transaction, subject to certain additional requirements.[11]

Proposed FINRA Rule 3160

FINRA proposes to adopt NASD Rule 2350 into the Consolidated FINRA Rulebook as FINRA Rule 3160, subject to certain amendments to streamline the rule and to reflect applicable provisions of GLB and Regulation R.

First, the proposed rule change would amend the scope of the rule to conform to the networking exception in GLB. NASD Rule 2350 applies only to broker-dealer conduct *on* the premises of a financial institution where retail deposits are taken. However, the networking exception in GLB applies to networking arrangements in which a broker or dealer offers brokerage services *on or off* the premises of a bank.[12] Accordingly, with the exception of those requirements addressing the physical setting, proposed FINRA Rule 3160 would apply to a member that is a party to a networking arrangement with a financial institution under which the member offers broker-dealer services, regardless of whether the member is conducting broker-dealer services on or off the premises of a financial institution.[13]

Second, the proposed rule change would make certain minor changes to the provisions addressing setting, as set forth in NASD Rule 2350(c)(1) (Setting). The setting provision establishes the requirements regarding a member's presence on the premises of a financial institution. To better align the rule text with the language in the networking exception in GLB and its associated rules in Regulation R, proposed FINRA Rule 3160 would provide that a member conducting broker-dealer services on the premises of a financial institution: (1) Be clearly identified as the person performing broker-dealer services and distinguish its broker-dealer services from the services of the financial institution; (2) conduct its broker-dealer services in an area that displays clearly the member's name; and (3) to the extent practicable, maintain its broker-dealer services in a location physically separate from the routine retail deposit-taking activities of the financial institution.

Third, the proposed rule change would amend the provisions addressing networking agreements, in NASD Rule 2350(c)(2) (Networking and Brokerage Affiliate Agreements), to reference certain requirements in GLB and Regulation R regarding written agreements between banks and broker-dealers. As noted above, Rule 701 of Regulation R allows a bank employee to receive a contingent referral fee not subject to the ''nominal amount'' restriction, so long as the client referred to the broker-dealer by the bank employee is an ''institutional'' or ''high net worth'' customer, as defined in Rule 701, and the other conditions of the rule are satisfied.

Rule 701 requires that the written agreement between a bank relying on the exception from the definition of ''broker'' under Exchange Act Section (3)(a)(4)(B)(i) and the exemption under Rule 701 for institutional and high net worth customers and its networking broker-dealer to include terms that obligate the broker-dealer to take certain actions.[14] In particular, the written agreement between the bank and broker-dealer must require that the broker-dealer:

(1) Determine that a bank employee is not subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act, have a reasonable basis to believe that the customer is a ''high net worth customer'' or an ''institutional customer'' and conduct a suitability or sophistication analysis for customers and securities transactions by customers; [15]

(2) Promptly inform the bank if the broker-dealer determines that the customer referred to the broker-dealer is not a ''high net worth customer'' or an ''institutional customer,'' as applicable or the bank employee receiving the referral fee is subject to a statutory

[5] *See Notice to Members* 97–89 (December 1997).

[6] *See* Securities Exchange Act Release No. 39294 (November 4, 1997), 62 FR 60542, 60547 (November 10, 1997) (Approval Order).

[7] *See* 17 CFR 247.700–781.

[8] *See* 15 U.S.C. 78c(a)(4).

[9] The exceptions in Section 3(a)(4)(B) of the Exchange Act apply to ''banks'' as defined in Exchange Act Section 3(a)(6). NASD Rule 2350 addresses ''financial institutions.'' *See supra* note 4.

[10] *See* 17 CFR 247.700 for definitions of the terms ''nominal one-time cash fee of a fixed dollar amount,'' ''referral,'' ''contingent on whether the referral results in a transaction'' and ''incentive compensation.''

[11] *See* 17 CFR 247.701.

[12] *See* 15 U.S.C. 78c(a)(4)(B)(i).

[13] The title of the rule would be changed from ''Broker/Dealer Conduct on the Premises of Financial Institutions'' to ''Networking Arrangements between Members and Financial Institutions.''

[14] *See* 17 CFR 247.701(a)(3). *See also* Securities Exchange Act Release No. 56501, 72 FR 56514, 56523 (October 3, 2007) (Definitions of Terms and Exemptions Relating to the ''Broker'' Exceptions for Banks). (''Banks and broker-dealers are expected to comply with the terms of their written networking arrangements. If a bank or broker-dealer does not comply with the terms of the agreement, however, the bank would not become a ''broker'' under Section 3(a)(4) of the Exchange Act or lose its ability to operate under the proposed exemption.'')

[15] *See* 17 CFR 247.701(a)(3)(ii)–(iii).

disqualification under Section 3(a)(39) of the Exchange Act; [16] and

(3) Inform the customer if the customer or the securities transaction(s) to be conducted by the customer does not meet the applicable standard set forth in the suitability or sophistication determination in Rule 701; [17]

In addition, the broker-dealer may be contractually obligated to provide certain disclosures to a referred customer.[18]

Proposed FINRA Rule 3160 would clarify that networking agreements must include all broker-dealer obligations, as applicable, in Rule 701 and that independent of their contractual obligations, members must comply with all such broker-dealer obligations. In this regard, the release adopting Regulation R specifically contemplated that FINRA would adopt a rule to require that broker-dealers comply with the requirements of Rule 701.[19]

Next, the proposed rule change would modify the provisions addressing customer disclosure and acknowledgements, in NASD Rule 2350(c)(3) (Customer Disclosure and Written Acknowledgement), which require members to make certain disclosures to customers, at or prior to account opening, regarding securities products, and to make reasonable efforts to obtain a customer's written acknowledgement of the receipt of such disclosures at account opening. Such disclosures include that the securities products are: (1) Not insured by the Federal Deposit Insurance Corporation; (2) not deposits or other obligations of the financial institution and not guaranteed by the financial institution; and (3) subject to investment risk, including possible loss of the principal invested. The proposal would not incorporate the written acknowledgement requirement into proposed FINRA Rule 3160, in light of the application of the rule to networking arrangements regardless of whether the member is conducting broker-dealer services on or off the premises of a financial institution and the obligation that members provide the requisite disclosures orally and in writing. In this context, FINRA believes that oral and written disclosure to customers regarding securities products is sufficient and that requiring a written acknowledgement of receipt from customers is unnecessary.

Lastly, the proposed rule change would amend the provisions addressing communications with the public, in NASD Rule 2350(c)(4) (Communications with the Public), consistent with the extension of proposed FINRA Rule 3160 to networking arrangements where the member conducts broker-dealer services on or off the premises of a financial institution. NASD Rule 2350(c)(4) requires a member to make the same disclosures regarding securities products discussed above on advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the member or that are distributed by the member on the premises of a financial institution. To further reduce potential customer confusion, proposed FINRA Rule 3160 would extend this requirement to include all of the member's advertisements and sales literature that promote the name or services of the financial institution or that are distributed by the member at any other location where the financial institution is present or represented.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[20] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will clarify and streamline the FINRA requirements for broker-dealer networking arrangements and will serve to better align the FINRA requirements with GLB and Regulation R.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–047. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[16] *See* 17 CFR 247.701(a)(3)(v).

[17] *See* 17 CFR 247.701(a)(3)(iv). *See* Securities Exchange Act Release No. 56501, 72 FR 56514, 56526 (October 3, 2007) (re: Suitability or Sophistication Analysis by Broker-Dealer). The ''sophistication'' analysis is based on the elements of NASD IM–2310–3 (Suitability Obligations to Institutional Customers). FINRA is seeking comment on a proposal regarding a consolidated FINRA rule addressing suitability obligations. *See Regulatory Notice* 09–25 (May 2009).

[18] *See* 17 CFR 247.701(b).

[19] *See* Securities Exchange Act Release No. 56501, 72 FR 56514, 56528 n.135 (October 3, 2007) (''As stated in the proposal, the Commission anticipates that it may be necessary for either FINRA or the Commission to propose a rule that would require broker-dealers to comply with the written agreements entered into pursuant to Rule 701.'').

[20] 15 U.S.C. 78*o*–3(b)(6).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–047 and should be submitted on or before September 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19735 Filed 8–17–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60477; File No. SR–Phlx–2009–67]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Firm Proprietary Facilitation Orders

August 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on August 5, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to waive the Firm Proprietary Options Transaction Charge for members executing facilitation orders[2] when such members are trading in their own proprietary account.

While changes to the Exchange's fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after August 11, 2009.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to encourage firm facilitation transactions, raise additional revenue for the Exchange and create incentive for Member Organizations to continue to facilitate customer order flow. Currently, the Firm Proprietary Options Transaction Charge is $.24 per contract. This fee applies to firm proprietary orders (''F'' account type) in equity options products. In addition, Firm Proprietary Options Transaction Charges is capped in the aggregate for one billing month at $75,000 per member organization (''Monthly Firm Cap''), except for orders of joint back-office (''JBO'') participants.[3]

The Exchange is proposing to waive the $.24 Firm Proprietary Options Transaction Charge for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account.[4] The Exchange desires to waive the Firm Proprietary Options Transaction Charge for member transacting proprietary trades in their own account to encourage member firms to facilitate additional customer order flow.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the waiver of the Firm Proprietary Options Transaction Charge is equitable because it uniformly applies to all member organizations. This waiver is consistent with the current fee schedule and industry fee assessments of member firms that allow for different rates to be charged for different order types originated by dissimilarly classified market participants.[7] For example, the Exchange assesses different transaction fees applicable to the execution of Principal Acting as Agent Orders (''P/A Orders'')[8] and Principal Orders (''P Orders'')[9] sent to the Exchange via the Intermarket Option Linkage (''Linkage'') under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Plan''). The Exchange charges $0.45 per option

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] A facilitation occurs when a floor broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. *See* Exchange Rule 1064.

[3] A JBO participant is a Member, Member Organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (''JBO Broker'') subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System. *See also* Exchange Rule 703. JBO participant orders are excluded from the definition of Firm Proprietary because the Exchange is unable to differentiate orders of a JBO participant from orders of its JBO Broker and therefore is unable to aggregate the JBO participant's orders for purposes of the defining Firm Proprietary transactions. JBO participant orders may employ the F-account type and qualify for the firm proprietary charge, but would not be eligible for the Monthly Firm Cap.

[4] The waiver would not apply to orders where a member is acting as agent on behalf of a non-member.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] NYSE Amex currently charges different rates to different market participants in assessing its firm facilitation fee. *See* Securities Exchange Act Release No. 60378 (July 23, 2009), 74 FR 38245 (July 31, 2009) (SR–NYSEAmex–2009–38).

[8] A P/A order is an order for the principal account of a specialist (or equivalent entity on another participant exchange that is authorized to represent public customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. *See* Exchange Rule 1083(k)(i).

[9] A Principal Order is an order for the principal account of an Eligible Market Maker and is not a P/A Order. *See* Exchange Rule 1083(k)(ii).

contract for P Orders sent to the Exchange and $.30 per contract for P/A Orders.[10] The Exchange believes that waiving the Firm Proprietary Options Transaction Charge for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own account is consistent with rate differentials that exist in the current fee schedule and serves to encourage members to facilitate customer order flow.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change established or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2009–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submission should refer to File Number SR–Phlx–2009–67. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you with to make available publicly. All submissions should refer to File Number SR–Phlx–2009–67 and should be submitted on or before September 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19733 Filed 8–17–09; 8:45 am]

BILLING CODE 8010–01–P

[10] *See* Securities Exchange Act Release No. 60210 (July 1, 2009), 74 FR 32989 (July 9, 2009) (SR–Phlx–2009–53).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60458; File No. SR–NYSEAMEX–2009–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Deleting Rule 409A—NYSE Amex Equities and Adopting New Rule 2266—NYSE Amex Equities To Conform to Proposed Rule Changes Submitted in a Companion Filing by the New York Stock Exchange LLC

August 7, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 28, 2009, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, formerly the American Stock Exchange LLC and NYSE Alternext US LLC,[4] proposes to delete Rule 409A—NYSE Amex Equities and to adopt new Rule 2266—NYSE Amex Equities to conform to proposed rule changes submitted in a companion filing by the New York Stock Exchange LLC (''NYSE'').[5] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange changed its name to NYSE Amex in March 2009. *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24).

[5] *See* SR–NYSE–2009–76, formally submitted on July 28, 2009.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to delete Rule 409A—NYSE Amex Equities and to adopt new Rule 2266—NYSE Amex Equities to conform to proposed rule changes submitted in a companion filing by the NYSE.

Background

As described more fully in a related rule filing,[6] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC, a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC, and continues to operate as a national securities exchange registered under Section 6 of the Act.[7] The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the ''Equities Relocation''). The Exchange's equity trading systems and facilities at 11 Wall Street (the ''NYSE Amex Trading Systems'') are operated by the NYSE on behalf of the Exchange.[8]

As part of the Equities Relocation, NYSE Amex adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Trading Systems.[9] The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

Proposed Conforming Amendments to NYSE Amex Equities Rules

As noted above, the Exchange proposes to delete Rule 409A—NYSE Amex Equities and to adopt new Rule 2266—NYSE Amex Equities to conform to proposed rule changes submitted in a companion filing by the NYSE. As discussed in more detail below, the NYSE is filing the proposed rule changes to harmonize these NYSE Rules with changes to corresponding Incorporated NYSE Rules filed by the Financial Industry Regulatory Authority, Inc. (''FINRA'') and approved by the Commission.[10] Unless specifically noted, the Exchange is proposing to adopt the NYSE's proposed rule changes in the form that they have been approved for filing by the Commission, subject to such technical changes as are necessary to apply the changes to the Exchange. The Exchange further proposes that the operative date of these rule changes be the same as the operative date of the NYSE's proposed rule changes on which this filing is based.

In relevant part, FINRA adopted NASD Rule 2342 (SIPC Information) as consolidated FINRA Rule 2266 and, because it is substantively similar to this new rule, deleted FINRA Incorporated NYSE Rule 409A (SIPC Disclosures).[11] FINRA Rule 2266 requires all FINRA members, except for those members that are not Securities Investor Protection Corporation (''SIPC'') members or whose business consists exclusively of the sale of investments that are not subject to SIPC protection, to advise all new customers in writing at the time they open an account that they may obtain information about SIPC by contacting SIPC and to provide such customers with SIPC's contact information.[12] Such information must also be provided annually to all existing customers. Where both an introducing firm and a clearing firm service the same account, the firms may assign these requirements to one or the other firm.[13]

NYSE correspondingly proposes to delete NYSE Rule 409A and to adopt new Rule 2266 to conform to FINRA's approved amendments to its Rules. As proposed, NYSE Rule 2266 adopts the same language as FINRA Rule 2266, except for substituting for or adding to, as needed, the term ''member organization'' for the term ''member'', and making corresponding technical changes. As with the consolidated FINRA Rule, under proposed NYSE Rule 2266 Exchange members and member organizations will be required to provide SIPC disclosures to all new customers upon opening an account and to existing customers on an annual basis.

The Exchange proposes to correspondingly delete Rule 409A—NYSE Amex Equities and to adopt new Rule 2266—NYSE Amex Equities in the form proposed by the NYSE, subject to adding ''-NYSE Amex Equities'' to the title of the Rule.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[14] in general, and further the objectives of Section 6(b)(5) of the Act,[15] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule changes also support the principles of Section 11A(a)(1)[16] of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization among NYSE Rules, NYSE Amex Equities Rules and

[6] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex 2008–62) (approving the Merger).

[7] 15 U.S.C. 78f.

[8] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63) (approving the Equities Relocation).

[9] *See* Securities Exchange Act Release Nos. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63); 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106); 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03); 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10); *and* 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11).

[10] *See* Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009) (order approving FINRA 2009–016).

[11] In its filing, FINRA also adopted NASD Rules 2130 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)), 2810 (Direct Participation Programs) and 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as consolidated FINRA Rules 2080, 2310 and 4551, respectively. *See* Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009). Neither the Exchange nor NYSE is adopting these FINRA Rules.

[12] FINRA Incorporated NYSE Rule 409A did not contain these exclusions. *See* Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009).

[13] *See* Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1).

FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for their common members and member organizations. To the extent the Exchange has proposed changes that differ from the NYSE version of these Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Amex Equities Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the immediate change of the NYSE Amex's rule to make it consistent with the FINRA rule, thereby making compliance for dual members less burdensome. For these reasons, the Commission designates the proposal to be effective and operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMEX–2009–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMEX–2009–52. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NYSE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMEX–2009–52 and should be submitted on or before September 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19731 Filed 8–17–09; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2009–0041]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget's (OMB) to approve the following new information collection: 49 U.S.C. Section 5339—Alternatives Analysis Program (*OMB Number: 2132–NEW).* The Federal Register Notice with a 60-day comment period soliciting comments was published on May 13, 2009.

DATES: Comments must be submitted before September 17, 2009. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: LaStar Matthews, Office of Administration, Office of Management Planning, (202) 366–2295.

SUPPLEMENTARY INFORMATION:

Title: 49 U.S.C. Section 5339—Alternatives Analysis Program.

Abstract: Under Section 3037 of the Safe, Accountable, Flexible, Efficient Transportation Act—A Legacy for Users (SAFETEA–LU), the Alternatives Analysis Program (49 U.S.C. 5339) provides grants to States, authorities of the States, metropolitan planning organizations, and local government authorities to develop studies as part of the transportation planning process. The purpose of the Alternatives Analysis Program is to assist in financing the evaluation of all reasonable modal and multimodal alternatives and general alignment options for identified transportation needs in a particular, broadly defined travel corridor. The transportation planning process of Alternatives Analysis includes an assessment of a wide range of public transportation or multimodal alternatives, which will address transportation problems within a corridor or subarea; provides ample information to enable the Secretary to make the findings of project justification and local financial commitment; supports the selection of a locally preferred alternative; and enables the local Metropolitan Planning Organization to adopt the locally preferred alternative as part of the long-range transportation plan. FTA intends to evaluate program implementation by collecting information such as project milestones and financial status reports.

Estimated Total Annual Burden: 28 hours for each of the respondents.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, *Attention:* FTA Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: August 12, 2009.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. E9–19711 Filed 8–17–09; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Erie and Cattaraugus Counties, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Supplemental Environmental Impact Statement (SEIS) will be prepared for the proposed highway improvement project: US Route 219 Springville to Salamanca, NY Route 39 to NY Route 17 (I–86), Erie & Cattaraugus Counties, New York. A Reevaluation of the 2003 FEIS was completed in May 2009; NYSDOT and FHWA concluded that a SEIS for the un-built portion of the project was required due to (i) significant increase in the area of identified wetlands in the project corridor, and (ii) observed changes in traffic growth rates for some segments of existing Route 219 that may influence the safety and operational characteristics of the previously identified alternatives. These issues will be evaluated and presented through the development of the SEIS. FHWA intends to utilize the environmental review provisions afforded under Section 6002 of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU) in the development of the SEIS.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Kolb, P.E., Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Suite 719, Clinton Avenue and North Pearl Street, Albany, New York 12207, *Telephone:* (518) 431–4127. Or Alan E. Taylor, P.E., Regional Director, NYSDOT Region 5; 100 Seneca Street, Buffalo, NY 14203, *Telephone:* (716) 847–3238.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the New York State Department of Transportation (NYSDOT) will prepare a Supplemental Environmental Impact Statement (SEIS) to supplement the 2003 Final Environmental Impact Statement (FEIS) completed for the US Route 219, Springville to Salamanca, project. The SEIS will address the segment of Route 219 between the Town of Ashford and Interstate 86 near the City of Salamanca, all in Cattaraugus County, New York. The proposed improvement would involve the construction of a new route or the upgrade and rehabilitation of the existing route for a distance of about 25 miles. This project is necessary for the continuation of a modern and efficient transportation facility and trade corridor from the Greater Buffalo-Niagara region, at the US/Canadian border, to the I–86 corridor near the City of Salamanca. Depending on the alternative selected, the project may include interchanges, access management practices, and by-passes around population centers.

Alternatives under consideration include (1) the Null Alternative: taking no action; (2) the Upgrade Alternative: widening the existing two-lane highway to four lanes with the possible inclusion of population center by-passes; and (3) the Freeway Alternative: constructing a four-lane, limited access freeway on new location.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, along with private organizations and citizens who have previously expressed interest in this action and/or the 2003 FEIS. The public and agencies will be offered an opportunity to comment on the Purpose and Need, range of alternatives, level of detail, methodologies, etc. This will be accomplished through a series of coordination/stakeholder meetings. Subsequent to the coordination/stakeholder meetings, public information meetings will be held throughout the development of the SEIS in Ellicottville and Great Valley in 2010 and 2011. In addition, formal National Environmental Policy Act (NEPA) public hearings will be conducted. Public notice will be given of the time and place of the meetings and hearings. The Draft SEIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the SEIS should be directed to the New York State Department of Transportation or the Federal Highway Administration at the addresses provided above. Please identify all correspondence regarding this project as: PIN 5101.84, US Route 219, Springville to Salamanca, NY Route 39 to NY Route 17 (I–86)—SEIS, Erie & Cattaraugus Counties, New York.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this

program.) Authority: 23 U.S.C. 315; U.S.C. 771.123.

Issued on: *August 12, 2009*

Jeffrey W. Kolb,

Division Administrator, New York Division, Federal Highway Administration, Albany, New York.

[FR Doc. E9–19753 Filed 8–17–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 11, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the publication date of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before September 17, 2009 to be assured of consideration.

Bureau of Public Debt (BPD)

OMB Number: 1535–0100.

Type of Review: Extension.

Title: Affidavit by Individual Surety.

Form: PDF 4094.

Description: Affidavit from individual acting as surety for indemnification agreement for lost, stolen or destroyed securities.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 460 hours.

OMB Number: 1535–0063.

Type of Review: Extension.

Title: Request for payment or reissue of U.S. Savings Bonds deposited in Safekeeping.

Form: PDF 4239.

Description: Used to request reissue or payment of bonds in safekeeping when custody receipts are not available.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 34 hours.

OMB Number: 1535–0048.

Type of Review: Extension.

Title: Certificate of Identity.

Form: PDF 385.

Description: The form is used to establish the identity of the owner of U.S. Savings Securities.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 50 hours.

Clearance Officer: Judi Owens, (304) 480–8150, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–19786 Filed 8–17–09; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of an Entity Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one newly-designated entity whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.''

DATES: The designation by the Director of OFAC of one entity identified in this notice pursuant to Executive Order 13382 is effective on August 11, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, *tel.:* (202) 622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On August 11, 2009, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated the following entity whose property and interests in property are blocked pursuant to Executive Order 13382.

The designee is listed as follows:

KOREA KWANGSON BANKING CORP (a.k.a. KKBC), Jungson-dong, Sungri Street, Central District, Pyongyang, Korea, North [NPWMD].

Dated: August 11, 2009.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E9–19791 Filed 8–17–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of an Entity Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one newly-designated entity whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.''

DATES: The designation by the Director of OFAC of the entity identified in this notice, pursuant to Executive Order 13382 is effective on July 30, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.*: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, *tel.*: (202) 622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purportingto act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On July 30, 2009, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated the following entity whose property and interests in property are blocked pursuant to Executive Order 13382.

The designee is listed as follows:

KOREA HYOKSIN TRADING CORPORATION (a.k.a. KOREA HYOKSIN EXPORT AND IMPORT CORPORATION), Rakwon-dong, Pothonggang District, Pyongyang, Korea, North [NPWMD].

Dated: July 30, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–19790 Filed 8–17–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable On Federal Bonds: National Trust Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 2 to the Treasury Department Circular 570, 2009 Revision, published July 1, 2009, at 74 FR 31536.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company:

National Trust Insurance Company (NAIC #20141). Business Address: 6300 University Parkway, Sarasota, FL 34240. Phone: (800) 226–3224. Underwriting Limitation b/: $3,108,000. Surety Licenses C/: AZ, FL, GA, IL, IN, IA, KY, MD, MI, MS, MO, NE, NC, OK, SC, TN. Incorporated in: Tennessee.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2009 Revision, to reflect this addition.

Certificates of Authority expire on June each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c57O*.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: August 6, 2009.

Kevin L. Mcintyre,

Acting Director, Financial Accounting and Services Division.

[FR Doc. E9–19685 Filed 8–17–09; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Update to Identifying Information Associated With an Entity Previously Designated Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') has made changes to the identifying information associated with the following entity, previously designated pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.''

IRISL BENELUX NV, Noorderlaan 139, B–2030, Antwerp, Belgium; V.A.T. Number BE480224531 (Belgium) [NPWMD]

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, *tel.:* (202) 622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

The listing for this entity now appears as:

ANTARES SHIPPING COMPANY NV (f.k.a. IRISL Benelux NV), Noorderlaan 139, B–2030, Antwerp, Belgium; V.A.T. Number BE480224531 (Belgium) [NPWMD]

Dated: August 10, 2009.

Barbara Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E9–19789 Filed 8–17–09; 8:45 am]

BILLING CODE 4811–45–P

TENNESSEE VALLEY AUTHORITY

Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 09–05).

TIME AND DATE: 10 a.m. (EDT), August 20, 2009. TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Old Business

Approval of minutes of June 4 and July 21, 2009, Board Meetings.

New Business

1. Chairman's Report.
2. President's Report.
3. Report of the Finance, Strategy, Rates, and Administration Committee.
A. Fiscal Year 2010 Budget.
B. Rate Adjustment, including FCA Formula Revision.
C. Fiscal Year 2010 Bond Issuance Authorization.
D. Financial Trading Program Authorization.
E. Customer Issues.
i. Seasonal Pricing Programs.
ii. Interruptible Standby Power.
F. Policy on Renewable Portfolio Compliance.
4. Report of the Operations, Environment, and Safety Committee.
A. Kingston Progress Report.
B. Coal Combustion Products Remediation Plan.
C. Spent Fuel Claim Process.
5. Report of the Audit, Governance, and Ethics Committee.
A. Systems, Standards, Controls, and Culture Remediation Plan.
6. Report of the Community Relations and Energy Efficiency Committee.
A. Gee Creek Easement.
B. Land Plan Administrative Corrections.
C. Termination of Maintain and Gain Policy.
D. Kingston Area Economic Development.

FOR MORE INFORMATION: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: August 13, 2009.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. E9–19834 Filed 8–14–09; 11:15 am]

BILLING CODE 8120–08–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—September 10, 2009, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Carolyn Bartholomew, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.''

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on September 10, 2009 to address ''China's Media and Information Controls—The Impact in China and the United States.''

Background

This event is the eighth and final public hearing the Commission will hold during its 2009 report cycle to collect input from leading academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The September 10 hearing will examine Chinese propaganda narratives and information censorship surrounding ''sensitive'' news stories in 2008 and 2009, Chinese government information control policies in 2008 and 2009, and developments involving China's Internet control regime and Internet activism.

The September 10 hearing will be Co-chaired by Chairman Carolyn Bartholomew and Commissioner Daniel Blumenthal.

Information on hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web site *http://www.uscc.gov.*

Copies of the hearing agenda will be made available on the Commission's Web site *http://www.uscc.gov* as soon as available. Any interested party may file a written statement by September 10, 2009, by mailing to the contact below. On September 10, the hearing will be held in one session, beginning in the morning and running until the early afternoon. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

DATE AND TIME: Thursday, September 10, 2009, 8:15 a.m. to 12:45 p.m. Eastern Daylight Savings Time. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* in the near future.

ADDRESSES: The hearing will be held on Capitol Hill in Room 562 of the Dirksen Senate Office Building located at First Street and Constitution Avenues, NE., Washington, DC 20510. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; *phone:* 202–624–1409, or via e-mail at *kmichels@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: August 12, 2009.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. E9–19747 Filed 8–17–09; 8:45 am]

BILLING CODE 1137–00–P

Reader Aids

Federal Register

Vol. 74, No. 158

Tuesday, August 18, 2009

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, AUGUST

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 838/P.L. 111–48
Miami Dade College Land Conveyance Act (Aug. 12, 2009; 123 Stat. 1974)

S. 1107/P.L. 111–49
Judicial Survivors Protection Act of 2009 (Aug. 12, 2009; 123 Stat. 1976)

Last List August 11, 2009

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